

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 19
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JULY 12, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.
19 AND
20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.
AND
KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
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1 THE COURT: Good morning.

2 MR. FRAM: Good morning, your Honor.

3 THE COURT: Now, do we have Mr. Press?

4 MR. PRESS: Yes.

5 THE COURT: Okay. We are going to go on the
6 record.

7 Mr. Fram raised three objections to aspects of the
8 portion of the closing that Mr. Press gave at the end of
9 yesterday's session.

10 Mr. Fram, why don't you briefly give us the first
11 one?

12 MR. FRAM: Fine, your Honor. The first one is that
13 Mr. Press argued in response to my pointing out that his
14 clients had claimed that Mr. Wilder was there on April 2nd
15 and in fact Mr. Wilder testified that he wasn't.

16 THE COURT: Go right to the point.

17 MR. FRAM: He claimed, your Honor, that his
18 witnesses were "serious, credible people," and you can't do
19 that under 3.4 D --

20 THE COURT: Mr. Press, you can't vouch.

21 MR. JACOBSON: He asked me --

22 THE COURT: You can't vouch for your clients, you
23 can't do that.

24 MR. JACOBSON: He referred to them and said you saw
25 them on the stand. He was referring to the testimony.

1 THE COURT: No, no, no. He had to stand up in the
2 courtroom, they are serious people. There wasn't one single
3 reference to the record. All of Mr. Fram's comments about
4 the credibility were tied to the record, tied to things that
5 were said and that were in the record. Not one comment about
6 that.

7 You can't express a personal opinion about the
8 credibility of your clients. Don't do it again.

9 MR. PRESS: I won't.

10 THE COURT: And if you do it again -- I don't know
11 what I am going to do, but I am going to do something. And
12 you can, part of you record, you know they are telling the
13 truth because, and you can make whatever references to the
14 record you want. But having to stand up in the courtroom and
15 saying they are serious people, is not proper closing
16 argument.

17 All right. Let's go to the second point.

18 MR. FRAM: Thank you.

19 THE COURT: 1113.

20 MR. FRAM: Your Honor, 1113, you cited the
21 testimony, we provided the statute. The argument that they
22 could have gone and gotten an extension is just wrong, and
23 there is nothing in the --

24 THE COURT: It is not complete, it is a little more
25 murky than that. They filed the, some time early in March

1 irks don't know, they filed, TWA filed its 1113 motion.

2 MR. FRAM: March 15, your Honor.

3 THE COURT: Well, on the 21st, but on the 21st, and
4 there is no return date set on that motion.

5 MR. FRAM: Yes, your Honor.

6 THE COURT: On the 21st an amended motion was
7 filed, which may start the clock all over again. If you
8 don't even consider that possibility, that the amended motion
9 would start the clock all over again. And in that case, they
10 set the 6th as the date, and I don't know whether the Court
11 set that date, or it was in TWA's papers.

12 MR. JACOBSON: The testimony of Mr. Seltzer was that
13 that date had already been set by the court for other motions
14 so the motion war set for a date that was already set for
15 that case.

16 THE COURT: I don't understand what you said.

17 MR. JACOBSON: Seltzer said that April 6 had been
18 set as a date for a hearing in bankruptcy before the 1113
19 motion was filed, and when they filed the amended motion they
20 set it for that already scheduled date.

21 THE COURT: Yeah, but was it, TWA said in the
22 papers that is going to be the return date or was the it the
23 Court said it.

24 MR. JACOBSON: That was the date they said, TWA set
25 in the papers.

1 THE COURT: That is what they thought. It wasn't
2 a date the Court said I am going to hear it. There was a
3 date scheduled for other matters.

4 MR. JACOBSON: Correct.

5 THE COURT: But now, the 6th happened to be 16 days
6 from March 21st. I don't know with the weekend, how that
7 falls or anything.

8 So there may well be an additional period where you
9 could get an extension, if you start the clock running from
10 the date the amended motion is filed.

11 MR. FRAM: The testimony of Mr. Seltzer was that
12 that was the final date.

13 THE COURT: Well, first of all, nobody made any
14 effort to extend it.

15 Mr. Press, your statement that they had an
16 automatic right to extension, even the statute doesn't say
17 that. The Court has a right to grant the motion. It is not
18 like our motion practice here where the clerk can give a two-
19 week extension or something.

20 MR. FRAM: For an answer, and a dispositive motion.

21 THE COURT: The Judge doesn't have to get involved,
22 the Clerk's office will do it. But in this statute, the
23 Court has to approve it. In other words, it is not
24 automatic.

25 So quite candidly, it is a little bit murky. What

1 do you propose I do about it? I am not going to instruct the
2 jury on it.

3 You want me to put my thumb in, I am not.

4 But what do you suggest other than that? Because
5 your argument is quite candidly less than rock solid.

6 MR. FRAM: Well, if your Honor's view is that the
7 argument was fairly based upon the evidence, then I am
8 probably not be entitled to a remedy. What I would like is
9 to be able to get up and give a rebuttal closing, that would
10 be very nice. I don't know that your Honor is going to allow
11 that.

12 THE COURT: Let me, I have been thinking about that
13 all night, about the question of rebuttal closing. But let
14 me -- on that point. But because what I see right now is
15 exactly what Mr. Jacobson said. You had a date set. The
16 date was used when the amended was filed, and that happened
17 in 16 days, not 14 days after afterward. Right, March 21,
18 April 6?

19 MR. FRAM: But you raise an important point, your
20 Honor. The statute says --

21 THE COURT: It is not automatic.

22 MR. FRAM: The statute says it has got to be 14
23 days after it is filed. So if it gets refiled on the 21st,
24 April 6 could not have been the correct date. It would have
25 been more than 14 days later. It is right in the statute.

1 THE COURT: Bankruptcy judges, all judges, district
2 judges, we set our calendars, we change dates all the time.

3 MR. FRAM: In contradiction of the statute, your
4 Honor?

5 THE COURT: What are you going to do, appeal to the
6 Circuit?

7 You know, but the statement there was an automatic
8 right to an extension is not an accurate statement. It is an
9 inaccurate statement.

10 I am going to see what Mr. Press does with that
11 when he gets his closing.

12 I think the more relevant point from Mr. Press's
13 point of view is that nobody made any effort to get the Judge
14 to extend it. That is supported by the record. That nobody
15 made a motion, nobody asked the Judge, nobody said Judge, we
16 need a week or two to analyze this.

17 Nobody tried, or nobody even tried to use the
18 statute to get an extra number of days.

19 That is relevant. And that is supported by the
20 record. It is not supported by the record that it is an
21 automatic right.

22 But on the other hand, I think there is a very
23 credible argument that the filing started the clock going.

24 All right. Third point.

25 MR. FRAM: Your Honor, the third point is a little

1 bit more involved, but it looks to the distinction between
2 the conduct that is alleged was arbitrary and conduct that is
3 in bad faith.

4 The argument I heard yesterday is that ALPA made
5 promises, again and again, to support to, do all these
6 different things and it didn't fulfill them. It also, I
7 thought it sounded like a contract argument but of course
8 there is no consideration, including a contract. The idea
9 that by making promises and not fulfilling them you are
10 acting arbitrarily is inconsistent with the law, as we read
11 it.

12 There are cases which say that if you make promises
13 or give opinions about future events or interpretations of
14 documents, that that can form the basis for violation of the
15 DFR if they are made in bad faith. But the idea that simply
16 by making a promise and not fulfilling it there is in effect
17 strict liability I think is contrary to the statute, your
18 Honor.

19 THE COURT: We haven't heard all of Mr. Press's
20 closing, but I thought that part of his closing was proper.
21 I thought his, I mean, part of his theory of this case is
22 that ALPA in its desire to unionize the American pilots,
23 basically took a dive in negotiations on seniority. And the
24 fact that they were promised that we will do everything in
25 our power to help you, you need more money, we will leave no

1 stone unturned, or as I used to say to my clients, leave no
2 turn unstoned.

3 I thought that was proper closing. The cases I
4 read, I have them here. They deal with different sets of
5 facts and different situations. In the context of this case,
6 I didn't find anything improper in pointing out that there
7 was a discrepancy between statements, we will do everything
8 in our power to help you, and doing, and at least as
9 argument, and argument, that they didn't do anything to help,
10 you have contrary arguments, of course, on that. But that is
11 tied to the record and that I think is proper.

12 So I am not going to, on the third point, I didn't
13 find anything on that, along that line, the line of his
14 argument to be improper.

15 So as to the first point, Mr. Press has promised me
16 he won't do it again.

17 As to the second point, I want to see what he does
18 about that.

19 I think the point is that no effort was made. I
20 don't think the point is to adjourn the hearing. I think it
21 is a little murky. I don't think there is an absolute right
22 to an extension. I think that there was a right to appeal to
23 the Judge for an extension. And I think the Judge had the
24 authority here for at least five days for an extension.
25 Quite candidly, I think it is based on whatever. I am going

1 to see what Mr. Press does with that. If I think rebuttal on
2 that point is required, I will do it.

3 MR. FRAM: Thank you. As to the first point you
4 are going to charge the jury as to credibility?

5 THE COURT: You know what the charge is, you have
6 it.

7 MR. FRAM: I am not sure I have this morning's
8 version. It --

9 THE COURT: I haven't changed that, though.

10 MR. FRAM: I think what I may ask you to do is to
11 refer the jury back during the charge to Mr. Press's
12 assertion and ask them to disregard it. Let me look at the
13 charge.

14 THE COURT: All right. I will let you look at
15 that. If you are going to suggest something, I am not saying
16 I am going to grant it, but if you request something, write
17 it out.

18 MR. FRAM: Yes, absolutely. I may have somebody
19 with legible handwriting do it.

20 THE COURT: I can read your handwriting.

21 MR. FRAM: All right.

22 THE COURT: Or you can have somebody do it.

23 MR. FRAM: Thank you.

24 THE COURT: Okay. We will find out if the jury is
25 here.

1 Are you ready, Mr. Press.

2 MR. PRESS: Yes.

3 (Pause)

4 THE COURT: Mr. Press, Mr. Fram, this is the
5 up-to-date, it has no "draft" on it.

6 MR. FRAM: Thank you, your Honor.

7 (Off-the-record discussion).

8 (Jury enters the courtroom.)

9 THE COURT: What a handsome group of jurors.

10 You must have picked them for their good looks.

11 Good morning, everybody. Please be seated. Good
12 morning to you all. Nice to see you.

13 Mr. Press, I recognize you to continue your closing
14 statement.

15 MR. PRESS: Thank you, your Honor.

16 This is the end, I am confident we will conclude
17 this for you and you will get the case. And you will go back
18 there, but I have more words before that happens.

19 Continuing with this list of ALPA tools, I am going
20 to follow up on this notion that all my clients lied about
21 what happened on April 2.

22 Do you remember the accusation that Roland Wilder
23 testified that he wasn't there on April 2, so how could my
24 clients be telling the truth? They all concocted this
25 conspiracy and story and came in here and told it to you.

1 That is what they want you to believe. Because Roland Wilder
2 testified he wasn't there on April 2.

3 Well, what is missing from that argument is the
4 fact that Roland Wilder flip-flopped three times on whether
5 he was there on April 1 or April 2. And that was played to
6 you. And what Mr. Fram played to you was his last testimony
7 where he flip-flopped back saying no, I wasn't there. I was
8 there on the first, but not on the second.

9 So instead of coming in and trying to convince you
10 that all my clients lied, isn't it more reasonable to think
11 that Mr. Wilder was just confused on the date? Isn't that
12 more reasonable?

13 You know what I think about it. But you also have
14 something that was missing. David Singer, their own witness,
15 testified that Roland Wilder was there on April 2. Their
16 other pilot witnesses, Rautenberg, he conveniently couldn't
17 recall. That was his testimony. So every pilot witness that
18 hit that stand told you that Roland Wilder was there that
19 day.

20 And Roland Wilder, again he went back and forth
21 several times and then finally, the last time he testified it
22 was, no, Roland wasn't there.

23 So let's get back to this list of tools. Where I
24 left off was funding.

25 The next one I want to talk about is lobbying. The

1 evidence was lobbying. The evidence was very clear ALPA is
2 proud of its legislation affairs department, it has a
3 department devoted to going to Capitol Hill and getting
4 things done. Headed by this fellow Paul Hallisay, who
5 conveniently wasn't here to testify to you.

6 But we know that this is something that ALPA is
7 very proud of. I want to refer to exhibit 10. And this
8 again, this is the remarks, this is the script, or rather the
9 transcript of Duane Woerth's remarks to the American Airlines
10 pilots board of directors when he went down there and spoke
11 to them in the fall of 2000.

12 And he made some comments bragging about ALPA's
13 ability to lobby, at page 15. Page 15. I don't know where
14 it is.

15 Will, can you highlight that?

16 What does he say? We are trying to get back to the
17 core, what works for all trade unions. Most of it is pretty
18 simple. The same thing that works with the trade union works
19 in business. You consolidate power and money. All the
20 political power you can concentrate. All the economic power
21 you can concentrate. And you kick as much ass as you can
22 with it.

23 That is Duane Woerth talking and that is pretty
24 tough talk.

25 At page 22 he makes some more remarks about ALPA's

1 lobbying prowess.

2 He is talking about President Clinton. He had just
3 played, remember the video I played you, ALPA's 70th
4 anniversary video and there was a bunch of people that
5 talked, President Clinton talked on it, several other
6 politicians. He is talking about that. He had just played
7 the video. Then he makes this comment. Whether you are a
8 supporter of Clinton or not, it really doesn't matter. It is
9 all about political power and justice is never blind. Our
10 pack is huge, he says, continuing down, and we are the most
11 bipartisan pack in the labor movement. I go to the
12 Republican convention and we give money to John McCain. We
13 give money to more Republicans than any labor union because
14 we are the most focused, as you are, the most focused special
15 interest group you can get to.

16 What does he say, continuing down. It is all about
17 pilots, and that is the only thing we care about, and we will
18 do anything it takes to win a political arena. Whether that
19 be with the White House, or whether that be with Congress.

20 So -- and Duane Woerth testified here similarly, I
21 mean he was very proud of the fact that he could get in the
22 White House whenever he wants.

23 So this union has the political power that it takes
24 to get something done in Washington. They do.

25 And my clients asked for that power to be exercised

1 on their behalf when it came to this Bond bill. Remember how
2 that started, it wasn't ALPA's idea. It was Matt Comlish's
3 idea and Ted Case's idea. By the way, I got a picture of
4 Ted, in case you forgot him. He was the first witness to
5 testify. He is on a trip and can't testify. Ted and Matt
6 came up with that idea on their own. They went to Senator
7 Bond and they drafted the legislation themselves, and Senator
8 Bond introduced this thing.

9 And they asked for ALPA support over and over
10 again. They went to Duane Woerth's office and asked for
11 support. Nothing happened. Except one letter to Senator
12 Bond.

13 Writing a letter to the Senator that sponsored the
14 bill and saying we support this bill, that is silly. Unless
15 you think the Senator is going to withdraw the bill. I mean,
16 why would you write, it is the other 99 senators that you
17 should have been writing to, not the guy that sponsored the
18 bill. But that is what Duane Woerth did and that is all he
19 did.

20 Remember, it went further than that. Remember Matt
21 Comlish. He testified that they had these daily meetings
22 when they were organizing all these big groups of pilots to
23 go out on the Hill and knock on doors and talk to senators
24 and staffers.

25 Remember, they had these morning meetings, and Ted

1 and Matt would give orders out to everybody and they would
2 go, flight attendants and pilots.

3 And they were doing it at a hotel and they needed
4 better resources so they asked ALPA can we use your downtown
5 office, your DC office? What was the answer? No. They had
6 to go to a different union, the IAM, the flight attendants'
7 union, let the pilots use their space for that purpose. They
8 just wanted some space and a copy machine and even that was a
9 no.

10 There was some testimony, the bill gets passed or
11 gets introduced by Senator Bond on December 1st, I believe --
12 no, October 1st.

13 And then three weeks later there is this meeting in
14 DC where ALPA, or the merger committee of both pilot groups
15 are trying to negotiate a deal again. Remember, there is a
16 lot of testimony about that meeting. October 23. And Paul
17 Hallisay, the legislative affairs director for ALPA, called
18 in to the meeting, and he was asked, what have you been
19 doing? And he made a false statement, according to Howard
20 Hollander, he said I have been knocking on doors. Howard
21 said that is a lie, because every office I go into, I ask
22 them have you heard from ALPA? This is Howard's testimony.
23 And the answer he always got was no. And he made a record of
24 that on the business card that he brought into court with
25 him. He wanted to know what ALPA was doing, so he asked

1 people. And the answer he got was, we haven't heard from
2 your union. Mr. Hallisay wasn't doing any work. That is the
3 evidence.

4 Mr. Fram told you yesterday that the bill was going
5 nowhere. I guess it is some sort of excuse not to support
6 it. It wasn't going anywhere? What happened to it? The
7 Senate unanimously approved that bill. That was on December
8 8.

9 On their own, the TWA pilots got that bill through
10 the Senate. Then it has to go to Congress -- yeah, it has to
11 go then to the House of Representatives. What did ALPA do
12 then? This is P 357.

13 Remember the timing of this. December 8. It gets
14 unanimously approved by the Senate. Four days later,
15 December 12, we have this going on. Go to the next page,
16 please, will. This is this business about flight pay loss,
17 where pilots make claims, if they drop a trip, they are not
18 getting paid by their employer, doing union business, the
19 union will pay them for their lost pay. This is flight pay
20 loss, that is what this is.

21 This is -- this is the flight pay loss claim form
22 submitted by Howard Hollander for legislative work in DC.
23 And that claim got denied. This is Jalmer Johnson was the
24 testimony. That is the general manager of ALPA. Four days
25 after this bill passes the Senate, they start denying flight

1 pay loss claims for pilots that want to lobby.

2 Now we got to get through the House of
3 Representatives. There is five times more representatives
4 than senators. And they start denying flight pay loss. Go
5 to the next page. You can see another example. Jim Arthur.
6 He is another MEC representative, legislative work in DC.
7 Denied. Lisa Mauro, legislative work in DC. Denied. This
8 is four days after the thing gets passed by the Senate. I
9 don't think it is a coincidence.

10 And what happened? The bill died in the House.
11 That is what happened. So lobbying.

12 What is another tool that ALPA has? Litigation.
13 Litigation is another thing this union does.

14 They have a whole legal department. It is headed
15 by a man named Jonathan Cohen. I want to show you Mr.
16 Cohen's words in a previous example prior to the TWA's pilot
17 problems, this is exhibit 405.

18 Mike Day showed this to you. This was a memo,
19 March 22, '01 that he sent to the MEC and the negotiating
20 committee and he attached a whole bunch of documents that he
21 had collected from ALPA, that related to past seniority
22 integration. If you go to the next page, he is talking, here
23 at the bottom, Jonathan Cohen, director of legal. This is
24 his memo, about the TWA Ozark transaction which was a merger
25 that occurred in mid eighties. Ozark was a regional carrier

1 based out of St. Louis and TWA bought them and there were
2 seniority issues going on.

3 TWA took some harsh actions to the Ozark pilots,
4 not the pilots, but the carrier itself. The carrier
5 considered that it was not bound by ALPA merger policy in
6 this transaction. It took action that was harmful to the
7 Ozark pilots, transferred certain aircraft and what not.
8 They threatened to take further actions against the Ozark
9 pilots. They were ALPA pilots. They want to sue TWA. The
10 Ozark pilots representatives and their chosen counsel
11 concluded that the chances of -- oh, wait. Yeah, the chances
12 of prevailing in litigation challenging TWA's actions were
13 slim. Nevertheless, ALPA offered to pursue litigation and
14 grievances and to take whatever action the Ozark pilots
15 desired.

16 That is the standard that ALPA sets forth. You
17 want to sue, even if it is slim, we will let you do it.

18 At least for the Ozark pilots back then. You can
19 take that down.

20 But what happened in our case? We heard the ALPA
21 lawyers testify on the witness stand that Roland's ideas were
22 no good, meaning I guess they had a slim chance of
23 prevailing. And they denied every request. The first one
24 came in March, the next one came in July. I want to put up
25 the July 1, P-127. Roland prepared a detailed memo of a

1 strategy that he wanted to, a litigation that he wanted to
2 bring in July. This is right in the middle of the seniority
3 discussions between the two pilot groups, and the TWA pilots
4 are getting nowhere. Remember that America guy said we are
5 going to staple two thirds of you, that is it, they are never
6 budged off that position until the very end.

7 And we will talk about that later.

8 So this is right in the middle of this. A very
9 difficult negotiation is going on and Roland Wilder comes up
10 with this strategy and he prepares a multi-page memo that he
11 submits up to the ALPA legal department. And if you go I
12 think it is to the last page, he makes a conclusory statement
13 that this is an opportunity to generate much-needed leverage
14 for the TWA merger representatives. That is what they
15 needed. That is what they were looking for. Leverage. You
16 heard it from Mike Day over and over and over again, how
17 completely frustrated he was that he had no leverage against
18 there other pilot group he is negotiating with.

19 And Roland Wilder saw an opportunity, and he sought
20 saw it, and ALPA said no.

21 And we heard Clay Warner testify that, well,
22 Roland's strategy was, what were his words? Oh.
23 Fundamentally flawed, he said. Fundamentally flawed.

24 Well, I don't know. It is probably hard for you to
25 remember this, but I had Mr. Warner's testimony or his legal

1 memorandum when I took Roland's deposition, this
2 fundamentally flawed thing. I asked Roland point blank, I
3 said here is Clay Warner saying your strategy is
4 fundamentally flawed. Do you agree with that? Roland of
5 course said no. And he was quite solid about that.

6 So who are you supposed to believe? That is for
7 you to do.

8 But Roland Wilder thought this was an opportunity
9 to get some leverage, and it wasn't used.

10 His last strategy came in October. This was right
11 when the cram-down is coming, and he had a strategy to stop
12 the cram-down. Stop American and the American pilots from
13 imposing their own will on the TWA pilots.

14 This strategy I think is probably the most
15 egregious because, well, rather the denial, because ALPA had
16 promised that this one could be done. There was a meeting
17 with Roland, Mike Day, and Duane Woerth, in which they
18 discussed this, and Duane Woerth approved it. He said when
19 the time comes, I am going to let you do that. This, I think
20 the meeting was in August.

21 Well, the time came in October. The cram-down was
22 imminent. Roland Wilder was dispatched to complete the
23 paperwork to file the lawsuit. And what happened? Duane
24 Woerth called in to the MEC meeting, this is again in DC,
25 late October. And he reneged on his promise. He reneged and

1 and said no, I don't sue other unions. That was it.

2 What kind of excuse is that? You represent the TWA
3 pilots. You had approved this litigation strategy. And now
4 when I need to do it, you are saying no. It infuriated them,
5 and you heard their testimony. It was a very emotional day.
6 But that left them completely, just kick the legs under them,
7 they were done at that point. They were powerless to stop
8 the cram-down, and it came.

9 Then of course there was one final request for
10 litigation. One final one. Remember the TWA pilots, other
11 than Mr. Rautenberg, did not want to sign off on the
12 seniority plan that American and their pilots came up with,
13 this Supplement CC. TWA pilots generally did not want to
14 agree to that.

15 Mr. Rautenberg, for whatever reason, he did. But
16 there was a reason the TWA pilots didn't want to agree to it.
17 If you agree to it you can't complain about it in court. If
18 you sign a contract, you can't challenge that contract. And
19 so the TWA pilots, they had a reason for not agreeing, and
20 the reason was they wanted to leave an option open, a
21 litigation option open, to challenge Supplement CC when the
22 time was right.

23 And that time came. And Ted Case, he went to ALPA,
24 David Holtzman, and asked for permission to challenge
25 Supplement CC. He wanted to sue APA and have this thing

1 declared invalid, and he had a reason that he gave you. He
2 said listen, once it came out, they had names, every TWA
3 pilot was named and put on the seniority list. I can show it
4 to you. But he said wait. You are negotiating for me. You
5 are interfering with my union, with ALPA. ALPA has my
6 bargaining rights and you can't put me on a seniority list.

7 And so he thought that Americans interference with
8 ALPA's bargaining right provided a basis to challenge
9 Supplement CC and he asked to bring that lawsuit and he was
10 told, of course, no. But what you need to remember is that
11 none of the four ALPA lawyers that testified in this case
12 said one word about that.

13 They were quick to criticize Roland Wilder and tell
14 you that his ideas were no good, but none of them said that
15 Ted Case's idea wasn't any good. Not one.

16 I think that sounds pretty arbitrary. No, no,
17 Roland, no, Roland, no, Roland, no Ted. And of course they
18 didn't come up with one strategy of their own, not one. So
19 that is litigation.

20 Another tool that this union has is its affiliation
21 with the AFL-CIO which is an organization of labor unions,
22 and it is the biggest one in the world. At the time there
23 were 14 million affiliated members in the AFL-CIO, and this
24 again is something that ALPA was very proud of and quick to
25 tout to people as one of our strengths.

1 And we will look again at that speech that Duane
2 Woerth gave to the APA in October, 2000. That is exhibit 10.
3 This time, Will, I think the quote is at page 16.

4 He is talking about, ALPA's affiliation with the
5 AFL-CIO, and I think he says, I think, by consolidating our
6 power and money, you will add so much to our organization, he
7 is talking about the American pilots. You have such talent
8 in your organization and I think where it belongs, and I am
9 just, is where you can get the most leverage from it.

10 You need to leverage the rest of us. We need your
11 strength and you need to leverage ALPA. You need to leverage
12 what should be 70 to 90,000 pilots within a couple of years.
13 You need to leverage the 14 million members of the AFL-CIO,
14 and the 50 million dollars they put in every single year into
15 the political campaigns.

16 Then he talks some more about this affiliation with
17 the AFL-CIO on the next page, page 17. The second down here.
18 But that is where the power is. That is where the power is.
19 Right there. The president and staff are functionaries. We
20 are the Executive Branch as well, the Congress makes rules.
21 They have the local power and we try to carry out their will
22 in Washington, try to enforce, whether it be in Congress,
23 through the administration, any place we can enforce our
24 will. Try it and through the AFL I am the vice president of
25 the AFL-CIO, elected to the member of the executive council,

1 which is some of the larger union presidents of the AFL and
2 I think we just try to leverage all that power for our
3 benefit.

4 We leverage all that power for our benefit.

5 And he was right. I mean, that is power.

6 And remember on the video that he played and I
7 played for you, their 70th anniversary video, they had the
8 president of the AFL-CIO give a little presentation and he
9 talked, he thanked ALPA for resurrecting the strike as a tool
10 for labor and he referenced the Northwest strike in the
11 eighties, and the United strike. As to the United strike, I
12 don't expect you to remember this, he said, ALPA, you brought
13 labor to new heights in its effort for the United pilots.

14 So this is unionism at its core here we are talking
15 about, AFL-CIO, strikes. This is unionism. This is
16 brotherhood. And my clients all told you that is what they
17 expected. That is what they wanted. And it just wasn't
18 delivered here.

19 But it wasn't asked for specifically as to the
20 AFL-CIO. Mike Day, if you remember, this is again in that
21 July timeframe, the summer, when the negotiation with the
22 American pilots is going very, very rough. And he was very
23 concerned so he went to ALPA, presented at their executive
24 council, this is the same meeting where Bud Benseal was there
25 and Captain Pastore was there. Captain Pastore, I told you

1 he was asking to hire the lawyer and he got the "no, hell
2 no." Mike Day was there asking for something different. He
3 wanted some leverage in his negotiation. And he asked, he
4 said I want you to go to the AFL-CIO and ask them to organize
5 a boycott of American. And he explained that to you, what
6 that means. There is this boycott list. It gets distributed
7 to all 14 million of these AFL-CIO members. And that boycott
8 list says don't do business with that company. They are
9 unfair to labor. And this is something that union members
10 take seriously. Mike Day said so any way. And he showed you
11 an example of one of these boycott lists. It gets
12 distributed to ALPA members ever month in its magazine. This
13 is exhibit 440.

14 And he brought in the magazine, remember, he
15 brought in, this it was from October, 2001. Don't buy these
16 products. National boycotts. He wanted to see American be
17 put on that list. So that all 14 million members of the
18 AFL-CIO and their families would stop flying American
19 Airlines. What was the intent? Put some pressure on
20 American to go over to their pilot union and say, hey, you
21 need to soften up.

22 You need to lighten up a little bit. He wanted to
23 exert pressure on American to pressure its union. That is
24 all he was asking for. That wouldn't have cost ALPA a nickel
25 to ask the AFL-CIO to put American on that list. But what

1 did he get? No.

2 Now, this is a very interesting coincidence. If
3 you go to the next page, this is from October, 2001, this is
4 the ALPA magazine. No, we are not going to put American on
5 the boycott list but we will let them advertise in our
6 magazine.

7 You can take that down, will.

8 Another tool available to ALPA or at least one that
9 had exercised in the past, is this jumpseat thing.

10 As part of the same meeting when make day is
11 presenting to the executive council asking for a boycott of
12 American he asked for ALPA to threaten a jumpseat war. And I
13 think you all understand what we are talking about there.
14 Restricting American pilots from the jumpseat so they can't
15 fly for free on ALPA carriers. You got to remember there are
16 50, 60,000 ALPA members. 11,000 American. So if American
17 reciprocates and says, okay, you guys can't get in our
18 jumpseats. Who is going to win that war? That is easy. Who
19 is going to win? 60,000 versus 11,000? We know the answer
20 was no, we are not going to do that. ALPA came in here and
21 gave you a reason, it is against our policy. We have a
22 written policy on that.

23 But what were the facts? They do. Steve
24 Rautenberg testified that Duane Woerth told him that they had
25 done a jumpseat war in the past. If there was any specifics

1 about what it was, but they had done it and we know for a
2 fact they keep scabs out of the jumpseat. Their policy says
3 we don't use the jumpseat for political purposes. Yes, they
4 do. That is the fact. Keeping a scab out of a jumpseat,
5 that is punishing somebody because of something they did.
6 Well, that is what we wanted here. That is what the TWA
7 pilots wanted. These guys aren't scabs, these American
8 pilots but they are completely unfair to us, and were your
9 members.

10 But the answer was no.

11 This isn't so much a tool. But a policy of theirs
12 that I want to talk about. Independence Plus.

13 You heard Mr. Fram talk about this concept in his
14 closing, and Duane Woerth testified about it. This is the
15 notion at ALPA, this is how ALPA says it does business.
16 Independence Plus, what does it mean? It means the MECs are
17 to act independently. They make their own decisions. The
18 plus is, plus they get ALPA's support. So this is a really
19 good thing. You act independently plus you get all the
20 national support you need. Independence Plus. Well, what
21 happened here?

22 On April 2, the MEC is meeting to decide whether or
23 not to waive scope, and they are confronted with a gaggle of
24 advisors. And we know except for Mr. Rautenberg, everybody
25 else came to the meeting, five members, came to the meeting

1 not knowing how they are going to vote. We know Hollander
2 testified he was not going to waive scope. The others didn't
3 know what they were going to do. They had all been
4 previously advised not to waive scope. All three testified
5 to that. Howard, Sally, Ted -- four, and Alan.

6 The ALPA advisors up April 2 had always told them
7 we can beat the 1113, and you shouldn't waive your scope.

8 Now, ALPA of course disputes this.

9 They say no, no, we had meetings on March 14, where
10 we told, we fully advised everybody and we did the same thing
11 on March 21. Remember, they were very, very deliberate in
12 this testimony. By Warner, David Holtzman, Richard Seltzer.
13 They all came in here and said we fully briefed the MEC, two
14 prior occasions, March 14 and March 21, on the fact that you
15 are going to lose the 1113 and you are probably going to have
16 to give up your scope ultimately. That was their testimony.
17 It doesn't make sense.

18 Not if there is Independence Plus it doesn't make
19 any sense.

20 If you fully advice the MEC twice, and remember Mr.
21 Fram, he asked all his witnesses the same questions and they
22 understood, yes. They were able to ask all their questions?
23 Yes. And we answered all their questions? Yes. Did they
24 appear confused? No. He did that with all three of them.
25 And on both days, March 14 and March 21, so here is the

1 question. If they are smart, intelligent people, and you
2 fully advised them, why do you need to do it a third time on
3 April 2. It doesn't make sense. If you fully advised them
4 and they understood why do you feed to do it again, a third
5 time?

6 The answer is because it didn't happen the two
7 prior times.

8 The testimony makes no sense. The most reasonable
9 conclusion is that the advisors came on April 2 and advised
10 them to waive scope because they were all changing their
11 opinions, as my clients testified. They needed to secure
12 that scope waiver.

13 My clients all testified that there was strenuous
14 pressure exerted by the ALPA advisors that day in securing
15 the scope waiver. And it was only a result of that pressure
16 that led to their decision. Independence Plus? No. What
17 did that scope waiver do? It disarmed them of their best
18 leverage.

19 Now, we are not here to say what was the right
20 decision. We don't know. But we do know this, there was no
21 Independence Plus there. ALPA stripped them of their best
22 leverage and re-armed them with nothing. That is the truth.

23 So these are their tools. Contract, we provide
24 contract negotiating assistance. But not to TWA pilots. We
25 provide seniority negotiation assistance in the form the

1 president, going to the other group and trying to secure a
2 fair process. That is their policy, but no, not for the TWA
3 pilots. To provide funding in several ways through this
4 major contingency fund, and others. But no, not for the TWA
5 pilots.

6 We have this great lobbying department at your
7 service. But no, not for the TWA pilots.

8 We have this legal department and we litigate even
9 when the chances are slim. But no, not for the TWA pilots.

10 We have this affiliation with the 14 million member
11 AFL-CIO which provides much power. That is at your disposal,
12 but no, not for the TWA pilots.

13 We have a practice in the past and currently as to
14 scabs to keep people we don't like off our jumpseats. But
15 no, you can't do that, you TWA pilots can't. And we have
16 this policy of Independence Plus that you are going to make
17 your own decisions. But no, not for the TWA pilots.

18 That is what we had. Did ALPA act arbitrarily? At
19 the end, what we have here is we know that ALPA is very good
20 at supporting a scope waiver. They are very good at
21 supporting surrender, but they are not so good at -- I
22 shouldn't say that. But they provided no support for the TWA
23 pilots in the struggle that really mattered. The struggle
24 for their seniority. There was no support there. And that
25 is why we are here.

1 Now, Mr. Fram told you a few things that ALPA did
2 after the scope waiver, that I guess they are trying to
3 convince you would somebody given leverage to the TWA pilots.
4 I tried to be careful and note them all. If your memory is
5 that I missed one, I am not doing it intentionally. I am
6 going to list them up here, what I remember Mr. Fram, I made
7 a list, things Mr. Fram says ALPA did. The first thing was
8 that they paid flight pay loss. Remember this issue? In the
9 pilots contract with TWA, Inc., before the bankruptcy, they
10 had this 9,000 hour flight pay loss bank which was worth one
11 and a half million dollars, which meant that the company
12 would pay the pilots when they were out doing union work, the
13 company would pay for it. That is a good thing.

14 And you remember as part of the scope waiver and
15 this new contract that the pilots entered into, that flight
16 pay loss bank wasn't in there, it got removed for whatever
17 reason. No one explained it. All the pilots had to do going
18 in to that bankruptcy was remove their scope. Well, they
19 removed this \$1.5 million bank as well for some unknown
20 reason. Mr. Holtzman negotiated the deal. But he didn't
21 explain to you why that got taken out.

22 So what did ALPA do? Yes. ALPA stepped in and
23 filled that void and paid some flight pay loss, except for
24 lobbying at the end, which we know. But this was just for
25 the MEC to conduct its business, to have its meetings, pay

1 its rent, yeah, have its meetings and for the various MEC
2 officers and committee members did do their work.

3 So ALPA allows TWA to strip the pilots of their
4 flight pay loss bank and then they replenish it. Did that
5 provide any leverage to Mike Day's committee, negotiating for
6 seniority? No. That is not leverage.

7 The next thing, I don't know about the order, but
8 another one, he said, that Duane Woerth appeared before the
9 American Airline pilot union's board on April 5 and had a
10 discussion with them. Woerth, 4/5, at APA.

11 Okay. What else did he say? Oh. Yeah. Mr. Fram
12 told you that Duane Woerth went down there to Dallas and told
13 the American pilots that they had to be fair to the TWA
14 pilots. That is what he supposedly did.

15 And what is the proof of that? Duane Woerth's
16 testimony. There is not one substantiating piece of evidence
17 in the record. Yeah, the TWA pilots reported in their memos
18 afterward what Duane Woerth had told them he said. That is
19 not evidence of what Duane Woerth actually said. That is
20 just them parroting what he said, what he told them.

21 We showed you, we read you a deposition, very short
22 one we took of an American pilot who was actually at the
23 meeting. Do you remember we had to read it? I had, we had
24 Joe Jacobson sit in the witness stand and be the witness, I
25 think. And his name was Reifsnyder. This guy was at the

1 meeting, this April 5 meeting. He made a note
2 contemporaneous with that saying Duane Woerth told us that
3 the TWA pilots need to get real. The TWA pilots need to get
4 real. That is what this American pilot reported Duane Woerth
5 said on April 5.

6 And we read that deposition to you.

7 And remember, word of that "get real" comment when
8 it got out, it set off an uprising. People were upset and we
9 showed you a complaint that was made to the ALPA legal
10 department, that was P-144. I want to show that. This was a
11 complaint from the TWA pilot. He finds out about this. Down
12 here at the bottom. ALPA legal, April 10, five days after.
13 He has something, he got off a website. It is reporting on
14 the get real comment. He says, if this is true I am very,
15 very, very upset. And if he did, does it not leave ALPA
16 National open to a representational lawsuit.

17 This is sent to ALPA legal. If you go up, in the
18 email. It gets routed to Clay Warner ultimately. Remember,
19 and I showed you a little video clip from Clay Warner when I
20 took his deposition. It is sent to him for a response. What
21 does he say? I don't think a response is necessary or
22 appropriate. And you remember the question I asked him at
23 his deposition? I said, why wouldn't you think a response
24 was appropriate or necessary? The TWA pilot was very upset.
25 What was his answer?

1 What would I say to that pilot that wouldn't make
2 him even more angry. That was his answer.

3 You can take whatever implication you want from
4 that. But my follow-up question to Mr. Warner if you
5 remember from that deposition is what would you say to him?
6 I said, well, how about the truth.

7 So Duane Woerth attended one meeting at April 5th,
8 and is that providing leverage? No. No leverage TWA pilots
9 anything, it was a complete stab in the TWA's pilots' back if
10 you believe he actually told the American pilot union, his
11 guys need to get real. If he said that, that is treachery of
12 the highest order.

13 He is just telling the other side, we are not going
14 to put up any fight at all. Do what you want.

15 Mr. Fram mentioned that Duane Woerth attended a
16 meeting. And he did. Woerth meeting with the merger
17 committee. The merger committee had extensive sessions with
18 the American pilot negotiating group, that they went on
19 throughout the summer of 2000, and even into the fall. Duane
20 Woerth attended one meeting. Jim Baehler, remember him, the
21 older man that set up here, he was part of the TWA
22 negotiating group. He testified the meeting was on August 27
23 that Mr. Woerth attended. Mike Day testified about Woerth's
24 appearance, so does Sean Clarke, they didn't provide a
25 precise day. Mr. Baehler remembered the exact date.

1 And those three gentleman's testimony was
2 completely consistent. In fact they were excited Duane
3 Woerth was finally showing up, they viewed this as something
4 that could be very positive.

5 Finally the other side is going to get to hear from
6 our union boss that we can't be slapped around like this.
7 That is precisely what Duane Woerth told them in their
8 private pre-meeting meeting. The meeting with just the TWA
9 group. Duane Woerth was advised what was going on. He said
10 they are not going to do that to you. I am not going to let
11 that happen.

12 What happened when he got to the session with the
13 American group? He sat there meekly and said nothing other
14 than a parting comment, you guys need to work this out. What
15 did Mike Day, Sean Clarke and Jim Baehler tell you? They
16 were completely let down and disappointed by Duane Woerth's
17 performance and his failure to take this opportunity to show
18 some muscle and try to shove these guys around and let them
19 know that they can't be doing what they are doing.

20 So Duane Woerth's appearance at one meeting. Did
21 that get any leverage? If anything else, it was negative.
22 It again let the other side no, like the get real excellent,
23 let the other side know I am not going to put up any fight
24 here.

25 That was the third thing. What is the fourth thing

1 here. Mr. Fram suggested in his closing yesterday that this
2 Ron Rindfleisch, the ALPA organizer, that was dealing with
3 Mr. Clark and Mr. Hunnibell, he suggested that Rindfleisch
4 was doing that, he was some sort of mole to collect intel.
5 That is what he suggested to you, that that is what the guy
6 was doing. Of course, Mr. Rindfleisch don't say that, and no
7 witness said that. That is just something that Mr. Fram came
8 up with. Rino, that is his nickname, Rino is a mole. Rino,
9 the mole, that is a ridiculous suggestion.

10 He wasn't operating as some mole to collect
11 intelligence that could be helpful to TWA pilots. He was
12 trying to organize the American pilots.

13 Certainly didn't provide any leverage. No
14 leverage.

15 I am getting tired of writing that.

16 Fifth thing. Oh, this was big. Tannen. Mr. Fram
17 said, well, ALPA authorized the TWA MEC to hire Professor
18 Tannen to come up with this proposal, this seniority plan
19 that he had, that was offered to the American pilots. It was
20 called the Rightful Place proposal and Mike Day testified
21 about it. But they say we let you hire Tannen. Yeah, but
22 who paid for it? The TWA MEC paid for Professor Tannen. I
23 mean saying, you can go hire somebody, that is not leverage.
24 No. I am going to write no.

25 And then he said, oh, and we authorize you to hire

1 Roland Wilder. Yeah. But who paid for him? The TWA MEC.
2 And every strategy he came up with ALPA said no to. So
3 authorizing the MEC to hire Roland Wilder, that is not
4 leverage. If they would have left Wilder do his work, maybe
5 we could say that that was helpful.

6 They authorized Jim Baehler to be hired. But again
7 who paid for him? The TWA MEC. Giving somebody permission
8 to hire somebody, that is not creating leverage in a
9 negotiation.

10 Getting back to this right Rightful Place proposal.
11 Eight. And we played this. Duane Woerth made an
12 introductory remark to the proposal. Remember the video clip
13 I played you? Woerth video. And in it, by the way, that
14 video was proposed for publication to the TWA pilots. A copy
15 of that video went to all 2,300 of them. And that was done
16 so that they could understand what the seniority proposal was
17 all about. That wasn't done for the American pilots. But
18 what did Duane Woerth say in that video. You remember how he
19 concluded his remarks I don't want to play it. He said we
20 will be at your side.

21 Did that create leverage? No.

22 They point to Duane Woerth's letter to Bond as
23 something supportive that they did. I already talked about
24 that. That didn't create any leverage. Then they had
25 another letter, they mentioned on the Bond bill that was sent

1 to a representative Jerry Lewis, I think was his name. We
2 didn't have any context for this Louis I know he is a
3 Congress person. But we don't know.

4 Anyway, we had this Lewis letter. Did that create
5 any leverage? No. The last thing on the list I got from Mr.
6 Fram yesterday, oh, yeah. This was after the MEC on October
7 23, rejected Supplement CC, remember they had that vote and
8 they turned it down.

9 Mr. Fram told you yesterday that Duane Woerth
10 wanted to help these hot heads out that rejected the proposal
11 and try to see if we could reinvigorate our -- revisit, that
12 is what I want to say, if we could revisit Supplement CC and
13 Mr. Fram said that he called my clients hot heads, for
14 rejecting Supplement CC, and so Woerth, he said Woerth called
15 the APA to see if the issue could be revisited before
16 cram-down.

17 I don't remember Duane Woerth saying that. But if
18 he did, is that leverage? No. That is not leverage.

19 How long have I been talking?

20 THE COURT: There are many answers I could give to
21 that.

22 MR. PRESS: Some, that is some pathetic list of
23 support, I think. Nothing he said his client did in the
24 seniority dispute provided any leverage to Mike Day and his
25 committee, not one.

1 THE COURT: Mr. Press, any time you feel you need a
2 break, you just tell me, I am going to let you control that.

3 MR. PRESS: Okay.

4 THE COURT: Within limits, I will let you do it.

5 MR. PRESS: This is a perfect time for a break, as
6 I turn the a page.

7 THE COURT: Okay. Ladies and gentlemen. I can
8 assure you, giving a closing argument is strenuous, and so,
9 we will take, it is a little past quarter after nine, we will
10 take a 15-minute break now.

11 Do not discuss the case among yourselves. We are
12 close to the end. You will get the case very shortly.

13 (Jury leaves the courtroom.)

14 (The jury enters the courtroom.)

15 THE COURT: You may continue, Mr. Press.

16 MR. PRESS: Thank you, Judge.

17 So that was the arbitrary aspect. Again, we prove
18 our case if we show ALPA acted arbitrarily or in bad faith,
19 one or the other.

20 So did ALPA act arbitrarily to my clients, to the
21 TWA pilots? That is of course up to you to decide. I think
22 the evidence shows, would support a finding that they did.
23 But again, that is up to you, completely.

24 Let's talk about the bad faith thing. The Judge
25 will instruct you that a union violates its duty of fair

1 representation when it acts in bad faith. The Judge will
2 instruct you that you can find that faith in several ways and
3 one of them is when a union acts with hostility towards its
4 members. Hostility. If you find that ALPA acted with
5 hostility to the TWA pilots, that can support a finding it
6 breached its duty.

7 Now, was there any evidence of hostility presented
8 to you of ALPA officials acting in a hostile manner towards
9 the TWA pilots? Well, let's look what happened on March 28.
10 This was a meeting in Dallas, Mike Day's first meeting with
11 the American pilots. And negotiating seniority. The
12 negotiations had just begun. And remember what happened on
13 March 28. The TWA side made a proposal. It was basically a
14 modified, I call it modified date of hire. That was the
15 proposal made on 3/28. And this was scheduled series of
16 meetings, there was going to be a follow-up meeting the next
17 day, remember? And what happened? The TWA pilots went back
18 to their hotel in Dallas after they make their proposal, and
19 they are met with, by Clay Warner, and Bob Christy. David
20 Holtzman said he was there as well.

21 These guys were not invited. That was the
22 testimony, of Mike Day. They were not invited. They show
23 up. What did Mike say? He said I was kind of happy to see
24 them.

25 I knew I would get a good meal, he said. They did.

1 They went out to eat. But what happened after the dinner?
2 After the dinner they met back at the hotel and what did Clay
3 Warner and Bob Christie say? They said you have to make an
4 offer, you got to make an offer that is going to get a deal
5 done and you need to did it now and you need to offer up 825
6 TWA pilots to be stapled. Remember that? That is some
7 Independence Plus there. They are telling them how to
8 negotiate.

9 And they are asking that the TWA pilots make a
10 huge, huge, compromise, right off the bat. I mean, they made
11 a proposal the other day that had -- -that day, that had not
12 been responded to. There was already an offer on the table,
13 and these guys come in and say you need to offer up 825.

14 Do you remember what the testimony was from Mike
15 Day and Sean Clarke? They were outraged. And this resulted
16 in quite an argument. They all, Sean and Mike both testified
17 that it was heated. Very heated. And lots of yelling. From
18 Mr. Warner and Mr. Christy. So is that hostility? That is
19 again for you to decide.

20 But it didn't end there, the yelling, any way. By
21 the way, what happened the next day? The merger committee
22 went in and made an offer, not to staple 825, but 434.
23 Remember that? And Mike Day testified that that was a
24 horrible, horrible decision that he made, and something that
25 he has regretted ten years later. That is what he told you.

1 And he explained to you why. And he said because all we did
2 was bid against ourselves and show a huge sign of weakness.
3 And what happened?

4 They make the proposal and it wasn't even responded
5 to, the 434. The American guys just left. But this
6 hostility, we see it again on 4/2. Or at least we see
7 yelling. This was the MEC meeting to waive scope. And all
8 of the pilot witnesses that we presented told you that,
9 again, it was very heated. Much yelling. Roland Wilder got
10 beat up. Mike Day told you that.

11 Remember he was, with his own committee, he wasn't
12 part of the MEC. He was with the merger committee and Roland
13 was meeting with the merger committee and he went to go find
14 Roland because he had left their office and he found Roland
15 in the library being beat on, and verbally abused by the ALPA
16 advisors, Warner and Christy. That was Mike Day's testimony.
17 And of course the MEC members, Howard Hollander, Sally Young,
18 Alan Altman, Ted Case, they all told you in their meeting it
19 was more of the same, lots of yelling from Mr. Christie and
20 Mr. Warner. We see it again. And another critical juncture.
21 November 7, this time Sally Young that is again getting the
22 abuse. What happened on that day?

23 The full MEC on 10/23, in DC, had rejected
24 Supplement CC, they were not going to agree to that. And you
25 remember what happened? TWA closed the New York and Los

1 Angeles basis which meant that the MEC representative from
2 those basis were removed from the MEC. Everything was
3 collapsed into St. Louis and we were left with two MEC
4 members, Mr. Rautenberg and Ms. Young.

5 What happened? That was going to be temporary,
6 though. There was going to be an election on November 14 to
7 name two more MEC members. Sean Clarke I think was elected.
8 That was the week after this. What happened on this day?
9 Mr. Rautenberg, or somebody called a meeting. And on 24
10 hours notice, and the only agenda item was Mr. Rautenberg's
11 motion to approve Supplement CC. And Sally thought that this
12 was ridiculous. We had just, the full MEC two weeks prior
13 had rejected that. She was very uncomfortable with what was
14 going on.

15 Remember Mr. Rautenberg, he had more votes. He
16 represented more pilots than Ms. Young at the time, so if you
17 had one of these roll call votes he could do business on his
18 own. He could conduct business on his own. Sally said this
19 is not Democratic. The first officers at this airline are
20 not being represented, she said. And she refused to second
21 Mr. Rautenberg's motion and the motion died.

22 That was very upsetting to Clay Warner. And
23 remember, Sally's testimony that he was yelling at her,
24 threatening her, saying that if you get sued we are not going
25 to defend you. It was very abusive, according to Sally. Mr.

1 Warner, Mr. Warner of course denies all this. He denies he
2 was abusive to the merger committee in March. He denies he
3 was abusive to, or yelling at the MEC on April 2. He denies
4 he was yelling at Sally Young.

5 Well, each time he was accompanied by Bob Christy.
6 We never got to see him and really gauge his personality.
7 But you did get to see Mr. Warner. And my partner was asking
8 him some questions and Mr. Warner was getting annoyed, and
9 what did he do? He grabbed his head, oh, you are making my
10 head hurt, he yells.

11 I mean, if he is yelling at my partner in front of
12 you, this, is it a stretch to think that he was yelling at my
13 clients ten years ago when they are not doing what he wants
14 them to do?

15 There is also hostility, evidence of hostility from
16 Mr. Woerth. This relates to Matt Comlish when he was down in
17 DC trying to get the bill passed on Capitol Hill, he saw
18 Duane there one day, Duane Woerth, and he went to go talk to
19 Mr. Woerth, and Mr. Woerth very angrily told him to what?
20 Get off the Hill. That was Matt's testimony. So again, you
21 can consider that, if you find that that is more evidence of
22 hostility.

23 Now, the Judge will also instruct you on this bad
24 faith that you can find bad faith when a union deliberately
25 misleads its members, if a union deliberately misleads its

1 members.

2 Is there any evidence of that here? One big
3 example gets back to this March 28. Warner and Christy were
4 telling the merger committee that you have to do this. This
5 will get a deal done.

6 Well, the American side wasn't even prepared to
7 negotiate. We don't know what the source of the information
8 was, for these gentleman to make that statement, that these
9 guys are ready to deal. But the American side was not ready
10 to deal. They received the next day, they received the
11 merger committee proposal and walked out of the room without
12 countering it.

13 April 2. The MEC was told, according to our
14 witnesses, "The train is leaving the station." You have to
15 make this decision today. "The train is leaving the
16 station."

17 Was that true? We know from the documents that the
18 offer that was on the table, that got accepted, was to remain
19 open until the bankruptcy hearing on 4/6. And if you could
20 look at this, this is, there is a document that says this.
21 Exhibit 386. P. Okay. This is March 17. This Terry Hayes,
22 that was the American -- that was the TWA official who was
23 responsible for negotiating the bargaining agreement and he
24 sends this to the MEC. If you go to the next page, proposal
25 of TWA to ALPA. This proposal will be deemed withdrawn --

1 wait. This proposal to enter into a transition agreement
2 will remain in effect to the commencement of the hearing on
3 TWA's motion to reject the ALPA collective bargaining
4 agreement.

5 This will remain open until the hearing on the 1113
6 motion, which was when? It was set on 4/6. These guys, they
7 all come to the MEC on April 2 and say you got to do this and
8 you got to do it now, the train is leaving the station. But
9 they could have accepted the deal on the courthouse steps.

10 According to TWA's own offer.

11 Remember the testimony of Randy Babbitt? He was,
12 his video deposition was played. And one of the excerpts he
13 testified to this. If there was more time on April 2, you
14 don't need to make a decision that day. I asked him that
15 question, and that was his answer. So apparently he was
16 misled as well by what the -- he testified he thought a
17 decision had to be made by close of business on April 2.
18 Well, no. It wasn't until four days later.

19 If you are going to concede, you can always wait to
20 do that. Until the end, until the end.

21 So why was it the MEC was told you have to do it on
22 April 2. What happened on April 5? One day before the real
23 deadline, you got Woerth going to the APA board, for a
24 historic second appearance, this is the real deadline. The
25 MEC is told you got to do this today and you have Duane

1 Woerth planning this at the APA three days later. Is that a
2 coincidence?

3 The bankruptcy filings are revealing on whether or
4 not there were misleading statements. If you to go exhibit
5 136, plaintiff's 136, ladies and gentlemen, this was the
6 brief that Mr. Seltzer had filed in the bankruptcy court
7 opposing TWA's 1113 motion. All right.

8 This is the brief he filed. And if you go to the
9 first highlighted segment, Will, this is paragraph 7 of the
10 brief, five pages into it, subsection A of section 1 provides
11 for recognition -- he is referring to ALPA's collective
12 bargaining agreement with TWA, that section provides for
13 recognition of ALPA as the representative of TWA's pilots.
14 And that is the one subsection of section 1 that TWA does not
15 seek to reject.

16 What is he saying there? He is saying TWA's 1113
17 motion is asking the Court to strip section 1 which is the
18 scope language from the TWA pilots contract, except that part
19 that says that ALPA is recognized as their representative.
20 TWA was not seek to go have ALPA removed as the TWA pilots
21 union, that was not part of what they were asking, but what
22 did the ALPA advisors tell the MEC on April 2. If the 1113
23 is granted, you are going to lose union representation.

24 The complete contrary statement to what Mr. Seltzer
25 put in his brief.

1 There is another statement in his brief, if you go
2 to the next clip, Will, he is talking about a union's right
3 to strike. What does he say? A union's right to strike
4 after a bankruptcy court approves rejection of the collective
5 bargaining agreement is clear. What do they tell the MEC
6 three days later. Again that's correct brief is filed
7 Friday, March 30. Three days later tell the MEC, the MEC
8 asked questions.

9 What happens if this 1113 is granted and we don't
10 have a contract, can we strike? And the answer was no, the
11 testimony was a little all over the place. But they did not
12 say yes, you clearly have a right to strike. It was muddled,
13 as to whether or not you would have that right wasn't clear.
14 But that is not what Mr. Seltzer put in his brief to the
15 bankruptcy Judge.

16 And this right to strike was important. They were,
17 they asked these questions because they wanted to know. And
18 the situation would have gone down like this. The bankruptcy
19 Judge grants the 1113 and abrogates ALPA's contract with TWA
20 so they, the pilots don't have a labor agreement. Then
21 American goes ahead and completes the transaction with TWA,
22 buys all of its planes, hires all of its employees as it
23 promised to do.

24 Then what happens? The thought process was the TWA
25 pilots would not show up for work some day. They would go on

1 strike. And what would that have done? Grounded the airline
2 is what it would have done. And that of course would create
3 some leverage.

4 But they were told you don't have that right. At
5 the MEC meeting. Even though they clearly did, according to
6 Mr. Seltzer's brief.

7 Now, another aspect of bad faith that you are going
8 to get in the judge's instruction is that you can find bad
9 faith if the union did not disclose a conflict of interest.
10 Mr. Fram talked about this, and there was an abundance of
11 evidence that, that would allow you to find that ALPA was
12 attempting to organize the American pilots, while the TWA
13 pilots, TWA pilots were engaged in their seniority dispute at
14 the same time.

15 And is that a conflict of interest? That again is
16 up to you to decide. But we do know this. That ALPA's
17 organizing activities at American Airlines, that was never
18 disclosed to the TWA pilots at the time of these events.
19 During the seniority struggle, it was never disclosed.

20 Now, the Judge will, again, on the bad faith,
21 instruct you that an additional example is ignoring union
22 policies. We looked at that when I was talking about
23 arbitrariness. That is something you will be instructed to
24 find bad faith as well. The Judge will instruct you as to
25 bad faith that you have to find that ALPA had a bad faith

1 motive for its actions. What was motivating ALPA here? The
2 suggestion we made is the conflict of interest was motivating
3 ALPA. It had no stomach to fight the American pilots. Its
4 goal was to have those pilots join ALPA.

5 And what was the evidence of that?

6 First of all, with he had Tom Rachsford, we played
7 you part of his deposition. He said that he thought, I mean
8 from what he saw of Duane Woerth, he said bringing in the
9 American pilots was his legacy. That was Tom Rachford's
10 testimony.

11 And where did all this begin? In October,
12 September, October, 2000, ALPA passes this resolution, we
13 heard about the unity resolution, where Duane Woerth was told
14 to go out and bring back the Continental pilots, bring back
15 the American pilots. Oh, shoot -- and one other group. I
16 can't recall. But we will get to it.

17 So that was the union resolution, Duane Woerth set
18 out to do that. And he met with the APA board. He was
19 invited there for a meeting in the fall of 2000. This was
20 the first time the sitting ALPA president had done that, that
21 we are aware of, since the American pilots broke away in
22 1961. First time.

23 He met there and he spoke and what happened next?
24 The APA set up this committee, ALPA Exploratory Committee.
25 That committee that was charged with going out and finding

1 everything they could about ALPA and report back to the
2 American pilots.

3 And that process got underway. The American pilot
4 committee went to Washington, ALPA sent people to Dallas for
5 meetings. And that work was underway in the fall and winter
6 of 2000. And then what happened?

7 Early January, American announces it is buying TWA.
8 This created a problem for ALPA. It knew that there would be
9 a seniority dispute, that seniority was going to be an issue.
10 And that there could potentially be a fight. And so what did
11 it do? It took its effort underground. They knew they
12 couldn't openly organize or seek to organize the American
13 pilots. That would be too obvious. But we know that the
14 effort didn't stop. We know that from a mound of documents
15 that we have shown you.

16 The first one was P-243.

17 P-243, these were minutes from an ALPA Executive
18 Council meeting, January 23, through the 25th, of '01. This
19 is approximately what, two, three weeks after the deal is
20 announced? Duane Woerth is there and all of the executive
21 vice president. And there is a report on the unity campaign
22 on this first page. Right here. The pilot unity campaign is
23 continuing and Captain Woerth updated the counsel on the
24 effort that American Airlines and Federal Express. That was
25 the one I forgot. Updating the council on the effort at

1 American. That was January.

2 And then it is followed, there is a, that same,
3 part of the same meeting I should say, P 113, P 113. This is
4 a letter from ALPA's general manager, Jalmer Johnson, the
5 25th. He is writing to Captain Darrah, president of the
6 American pilot unit. And what does he say? I understand
7 your board is considering taking action to continue looking
8 at affiliation between ALPA and APA. In connection with any
9 communications efforts in which ALPA provides information to
10 your membership about our union and the benefits of ALPA
11 membership, we are willing to pay for the cost of
12 distributing such information, as well as any polling of your
13 members that may accompany this campaign.

14 This campaign. It is continuing. And they are
15 offering to pay for it. This is in January of 2001.

16 That same time the merger committee, TWA merger
17 committee, TWA negotiating committee, were in Washington,
18 D.C. for meetings to get ramped up on how do we do this. We
19 have never gone through a merger before. Same time period.

20 Okay. The next one I want did show you is P-244.

21 This is three months later. ALPA executive council
22 till meeting, April 9, 2001. Same participants there.

23 Ladies and gentlemen, you got to remember the
24 timing of these things. April 2, the ALPA advisors browbeat
25 the MEC into waiving scope. April 5, this is our evidence.

1 April 5, Duane Woerth told the APA board that the TWA pilots
2 need to get real. April 2, surrender. April 5, my guys need
3 to get real.

4 April 9, if you could go to the clip. Organizing,
5 there is an update on the organizing activities. What does
6 he say? The minutes say, the association has expanded its
7 activity with, among other things, the Allied Pilots
8 Association. As of April, seven days after the scope waiver,
9 President Woerth is reporting to the executive council of
10 this union that ALPA has expanded its activities to organize
11 the American pilots.

12 What do we see, five days later, if you look at
13 exhibit 147 P.

14 This is five days later. April 14. From an
15 American pilot Terry M to Ron Rindfleisch and actually Mr.
16 Fram showed you this. This is telling ALPA about the fact
17 that there is an American pilot running for president of that
18 union on an ALPA platform. That was the platform. We don't
19 need to look at it because it was shown to you yesterday.
20 This is five days after the presentation of executive council
21 that we are expanding our effort.

22 Now we got American pilot running on an ALPA
23 platform. And it just goes on from there.

24 I am going to show you some more email with this
25 Mr. Rindfleisch.

1 Before I do that, though, I want to play some video
2 clips from his deposition. Remember Mr. Rindfleisch, I
3 tormented you with two of his depositions by video. I did
4 not, I expected the man to be here and I wanted you to have
5 some foundation for his testimony before he got here so you
6 could see what he told me.

7 And so I want to remind you of some of his
8 testimony. And Will, if we could buzz through the clips. I
9 don't have it scrolled up to audio. He is asked that
10 question.

11 You were aware they, that is the American pilots,
12 initiated a card campaign in May of 2001, right?

13 "ANSWER: I don't remember the year.

14 "Okay. Okay. Mr. Rindfleisch, do you recall how
15 it is that you came to become aware that there was a card
16 campaign underway on the American property in the year 2001.
17 Do you recall how you learned that?

18 "ANSWER: I don't recall.

19 "QUESTION: All right. And when you discovered
20 this card campaign underway at American who did you speak
21 with at ALPA concerning that campaign.

22 "ANSWER: I don't remember.

23 "Well, I want to limit my questions for the time
24 period right now to the year 2001. Sitting here right now,
25 your best memory under oath, did you speak with John Clark on

1 the phone in the year '01?

2 "ANSWER: I don't remember.

3 "QUESTION: How did the year '02, did you speak
4 with John Clark on the phone that year?

5 "ANSWER: I just don't remember.

6 "QUESTION: Did you exchange emails with him in the
7 year '01, referring to John Clark?

8 "ANSWER. Don't remember.

9 "QUESTION. Did you change emails with Mr. Clark
10 any time in the year '02?

11 "ANSWER: I don't remember."

12 Then I asked the question.

13 "When they were running their card campaign you
14 were having frequent contact with those gentlemen on that
15 subject?

16 "ANSWER: I don't think that is true," he says.

17 "QUESTION: Did you have a file set up for the
18 American Airline campaign, on your computer?

19 "ANSWER: I don't remember. I may have kept some
20 emails. I didn't have a real file.

21 "QUESTION: Did you ever talk with either Clark or
22 Hunnibell about their expenses?

23 "ANSWER: I don't remember.

24 "QUESTION: And you applied that policy for this
25 scope -- in fact, you told Clark and Hunnibell they needed to

1 supply the backup, referring to their expenses.

2 "ANSWER: I don't remember that."

3 And then, that was his first deposition. After
4 that, the documents that are in these two binders that will
5 be available to you if you want to peruse them, after all the
6 I don't remember, I don't remember, I don't remember, I don't
7 recall, we get this. And we go and take his deposition
8 again. And this is a clip from that second one. I say:

9 "All right. When you were asked that, what did you
10 do to go find American Airline pilot email traffic?

11 "ANSWER: I believe I had a folder, a giant
12 folder."

13 Here it is, or some of it.

14 What is in that giant folder?

15 Will, 147 Q, this is part of this binder. This is
16 Terry M again writing to Mr. Rindfleisch, April 16. Listen
17 to this suggestion. "Maybe we should pledge our membership
18 to ALPA in exchange for their agreeing to staple the TWA
19 pilots. We get the seniority and they get 12,000 members
20 instead of losing 2,300."

21 What a suggestion. What did Mr. Rindfleisch do in
22 response to that? Nothing.

23 I am going to skip through a lot of what I -- let's
24 to P-147 S. In is May 20. Terry M again to Mr. Rindfleisch.
25 I recently received -- he is forwarding some email from

1 another unknown American pilot. It says I recently received,
2 as I am sure most of you will, a representation election
3 authorization card along with a campaign letter from Captain
4 Mark Hunnibell, candidate for APA vice president.

5 This reference to a representation election
6 authorization card. That is what we have been refer
7 referring to as this card campaign. That is what was mailed
8 out. Remember they played John Clark's testimony yesterday.
9 This is a reference to that. If you go down, Captain
10 Hunnibell states that as vice president of APA he will lead
11 the charge to reaffiliate with ALPA and has included an
12 included a card to make it easier for us to make the change
13 whether elected or not.

14 And if elected, make sure this is no impropriety, a
15 select group led by former LAX vice chairman John Clark will
16 independently control the card until a sufficient number can
17 be collected and then turned over to ALPA for proper NMB
18 disposition. NMB I think is a reference to the National
19 Mediation Board. This was the plan all along. To have Clark
20 collect them, and then when you get enough, send them to
21 ALPA, and ALPA was told that plan, at least we know by May
22 20. And was told of that plan, what did Mr. Rindfleisch do
23 about that? It is all in here.

24 If you go to P-147, this is an email, 147. Oh, D,
25 I am sorry. June 6, '01 Terry M, well, to Terry M. Somehow

1 ALPA got it. It was printed up. Ms. Toone's computer. This
2 talks about quite a few things. Hello. This is first
3 officer Randy Leruth with the hotline message for the LA
4 domicile on Friday, June 1. He starts off with "This
5 message will cover the following topics." Number 2 is TWA
6 seniority integration status.

7 If you go, next page, there is a rather lengthy
8 email. But the update does talk about the TWA seniority
9 integration. In here it says what? We want to avoid having
10 an arbitrator or judge decide the seniority integration by
11 date of hire.

12 You can stop right there.

13 Remember Mr. Fram telling you arbitration, you
14 don't know who, we don't know what an arbitrator would do,
15 and of course that is true. But we do know this, that we
16 know what the American pilots, or at least this American
17 pilot, thought. We got to avoid that because then there will
18 be date of hire. We also need to avoid a Judge, a
19 litigation, because we can end up with the same thing. Mr.
20 Case's litigation that got rejected. Maybe. But that is
21 their fear. Litigation is something that they fear. At
22 least this pilot did.

23 Go to 147 BB.

24 Okay. This is Mark Hunnibell writing to Ron
25 Rindfleisch, June 13. It is a rather, I do want you to read

1 this.

2 John Clark has relayed to me that you would be
3 interested in watching the ongoing discussion on APA's
4 challenge and response electronic bulletin board. What that
5 is, that is a place where for American pilots go to blog and
6 check on one another.

7 Please understand that distribution of messages
8 sent to this open forum is limited to APA members. I am
9 violating the acceptable use policy in setting you up to get
10 a copy, and risk theoretical union discipline in doing so.
11 Skip the middle. I want to go to Paragraph 2.

12 I have set up a daily digest subscription to this
13 challenge and response that goes to a special email address I
14 set up just for this purpose. Each morning at 4 all messages
15 posted in the prior 24 hours are compiled into the digest and
16 mailed out automatically. I have configured my special email
17 address to auto forward to your address so that means you
18 will get the digest each day until you tell me to make it
19 stop.

20 So what is going on here? Mr. Hunnibell has set it
21 up, against his own union policies, set it up for Mr.
22 Rindfleisch to see a blow-by-blow account of what the
23 American pilots are saying about this campaign. He gets, he
24 is going to get a daily digest of every communication on this
25 American pilot bulletin board on that subject.

1 The emails just go on from there and cover a wide
2 variety of subjects.

3 Then we get to the issue of the money and his
4 reimbursement request. And I want to start with exhibit 148
5 D. This is John Clark now, we see, writing to Mr.
6 Mugerditchian, and Mr. Rindfleisch, Mr. Rindfleisch said I
7 don't remember seeing a, any emails from Clark. But this one
8 was sent, October 14. Jerry, referring to Mr. Mugerditchian,
9 as we discussed several months ago in person, we know from
10 the testimony that was a reference to the July 23 meeting
11 where Clark and Hunnibell were invited to ALPA and they
12 toured and visited with Duane Woerth and others. As we
13 discussed at that meeting and on the phone more recently,
14 mark and you are filing this reimbursement request. At this
15 point we are only filing for what we have spent. And
16 attached to the email is a chart with the expenses broken
17 down and what not. So that is October 14.

18 Before I go any further, I want to remind you of
19 the testimony of Seth Rosen and Clay Warner on this subject.
20 Both of them told you it would be inappropriate for ALPA to
21 pay the expenses of this card campaign, this American
22 campaign. That would be inappropriate. One of them said he
23 was shocked it could happen, the other said surprised. I
24 don't remember which. That was, it would be inappropriate,
25 shocked and surprised if it happened. Let's look at what

1 happened next. October 31. 148, H. I am sorry.

2 This is an email, if you go to the middle you can
3 see it originated from Mr. Rindfleisch, and he is forwarding
4 a message from John. No one wanted to admit that that is
5 John Clark. But again, use your own thinking on that. But
6 it is to Ron. And he is saying, he is referring first all to
7 some post, but I want you to look at the last sentence. The
8 very last sentence of his email. "I also look forward to our
9 reimbursement."

10 And his message, this message, Mr. Rindfleisch
11 forwarded to Bob Christy, I am just referring to the people
12 that we heard about in this courtroom, Warner, Woerth,
13 Atterian, Johnson, Jonathan Cohen, Seth Rosen and Bill
14 Roberts. All those people were mentioned in this courtroom
15 as ALPA executives and officials. This email about this
16 reimbursement was forwarded to all of them that day.

17 What happened next on this reimbursement. Let's go
18 to 148 J.

19 148 J is a string of emails. But you got to start
20 at the bottom to make sense of it. This is Clark to
21 Rindfleisch. Thanks, John. That is how he signs. Who was
22 the John in the last one? Ron, what is going on with our
23 reimbursement? I thought I would hear from you.

24 How does Rindfleisch respond? You got to go up.
25 His response is November 6. "John, I am hoping to have an

1 answer and check very soon. I think I have Hunnibell's
2 address in our system but can you give me you and Dan Hall's
3 address."

4 Another American pilot.

5 So right there he is promising, I am hoping to
6 after an answer and check very soon.

7 Then you go up, Clark finishing the string. Ron,
8 the address to send the checks for me and Dan Hall is, that
9 address. That was a PO box that he had set up to collect the
10 cards.

11 I will get his check to him. To Mr. Hall.

12 Okay. The next document we have about this
13 reimbursement deal is 148 KK. So a month, this is December
14 5, a month previous we saw that Rindfleisch hoped to have an
15 answer and check very soon. What does he say here?

16 "Guys, please forward to me the original receipts
17 of your expenses that you emailed to me on October 14. I
18 apologize for the delay, but as soon as we can get the
19 receipts we can get checks cut."

20 December 5.

21 What else happened on that day? That was the day
22 John Clark went to Las Vegas and delivered the cards to Duane
23 Woerth and Jerry Mugerditchian. That very same day.

24 Do we have blurbs of Clark? I want to play this.
25 Oh, it comes later. I am sorry.

1 So December 5, the cards get delivered in Vegas and
2 on that same day Rindfleisch sends this out. We are going to
3 pay you. As soon as we get your receipts we are going to pay
4 you.

5 What else happened that day back in Vegas, big
6 party. P-362. Remember this? We showed you this was the
7 expense report of this guy John Feldvary, who is director of
8 ALPA Finance, I think, or treasurer. December 29, he is
9 submitting an expense report, wants to get reimbursed for
10 some stuff.

11 Go to the next page. What is the biggest part of
12 that? Well, the receipt for this dinner. December 5, '01 in
13 Vegas, Smith and Wolinski, a steak house there, \$996. And
14 who was at the dinner? He writes it down on the back side of
15 the receipt. Dinner, 12/5/01. Woerth, Dennis Dolan, an ALPA
16 executive vice president. Mugerditchian, John Clark.

17 That is some dinner. So John Clark delivers the
18 cards, he gets promised to pay and taken out to dinner all on
19 the same date. And they want you to believe that ALPA wasn't
20 involved in the campaign.

21 Let's go to 148 XX. This is John Clark writing
22 again to Mr. Rindfleisch, December 18.

23 What does he say? Since you and Jerry have
24 inquired about the contents of the card database, I provided
25 in disk form with the cards. I have attached a spread sheet

1 that is drawn from previously developed databases

2 Now, what is he talking about there? Let's look at
3 his testimony on these issues first.

4 This is John Clark. I asked him in deposition, and
5 he took them from you. Referring to the cards. Remember he
6 testified, he bought a sample of the card. ALPA was curious
7 about the format. He brought a sample and put them in his
8 shirt. That was his testimony. I asked him, referring to
9 Mugerditchian, took them from you. No. You took them back?

10 "ANSWER: You mean did I leave them with him when I
11 left Las Vegas?

12 "QUESTION: Yes, sir.

13 "ANSWER: Absolutely not. Okay. Proprietary.
14 Absolutely wouldn't do that.

15 "QUESTION: Now, what you brought was simply a
16 small representative sample so that they could look at the
17 cards?

18 "ANSWER: Right.

19 "QUESTION: Did you ever at some point after that
20 send to ALPA all of your campaign cards?

21 "ANSWER: No.

22 "QUESTION: That never happened?

23 "ANSWER: No."

24 That was his sworn testimony. Then there is more.
25 About the database. I showed him, this is what the exhibit

1 we were referring to. This file marked APA cards, if Ron
2 Rindfleisch told you that, that is my handwriting. APA
3 cards. There it follows, a post it, APA cards, 1,549.
4 Rindfleisch says I don't know if that is my handwriting.
5 Then what follows is a chart, a database of numbers and
6 dates. And then redacted. That means, that is a lawyer word
7 for we deleted it, whatever else is there. And this was
8 shown Mr. Clark at the deposition and here is what his
9 testimony was.

10 "QUESTION: And you don't know anything about that
11 chart, do you?

12 "ANSWER: No, I think it is a fabrication.

13 "QUESTION: A fabrication of what?

14 "ANSWER: I think it is a fabrication of whatever
15 somebody wanted it to be."

16 Mr. Clark under oath testified that this document,
17 this database, is a fabrication. Didn't know what it was.

18 Now, go back to the email, 148 XX. Since you and
19 Jerry have inquired about the contents of the card database I
20 provided in disk form with the cards, I have attached a
21 spread sheet.

22 Mr. Clark's testimony is completely contrary to all
23 the evidence in the record. And you had to ask yourselves
24 why? Who was he trying to protect?

25 Back to reimbursement, December 19. Oh, 148 Z Z.

1 This is December 19. Right here, Rindfleisch writing to
2 Clark. John, I have been told there is nothing in the ALPA
3 budget for organizing the APA pilots. But I have to be
4 honest with you and say we are going to reimburse you three
5 guys on the expenses you turned in as soon as we get your
6 receipts. But that is confidential. Rino.

7 Remember the deposition I asked Mr. Rindfleisch,
8 didn't you ask those pilots to turn in their expenses? No.
9 No, I don't remember, was his testimony. When now we see he
10 did. What happened the next day, 148, EEE. This is the next
11 day, December 20, Clark to Rindfleisch. I dropped the
12 receipts and some other info about the BRM account and PO box
13 in the mail today. So the receipts are on the way. One day
14 after Rindfleisch asked for them.

15 Something else happened that day. That is P-218.
16 Mr. Rindfleisch is writing to two people at the bottom:
17 Right down here at the bottom. December 20 he is writing to
18 Clay Warner and Kevin Barnhurst, who is in ALPA finance
19 department. What does he say? Please review this before I
20 send it to the APA ALPA pilots, John Clark and Mark
21 Hunnibell.

22 And what follows is a proposed, or a draft message
23 that email that Mr. Rindfleisch wants to send to Clark and
24 Hunnibell, and the last sentence before "I hope again," what
25 does he say. This is going to be part of the message,

1 "Again, I must add admit that we will reimburse you three
2 guys for the expenses you already submitted when we receive
3 them."

4 So he is asking for ALPA legal and ALPA finance to
5 review this message before it goes out. And what does Mr.
6 Warner do? He responds to it that same day up at the top.

7 "I made a few changes. Clay."

8 And then the next page of the document is his
9 marked-up version of the proposed email.

10 Mr. Warner, he edits all three paragraphs including
11 the reimbursement one. Again, I must admit that we will
12 reimburse you three guys for the expenses, not submitted, but
13 the expenses incurred when we receive them. So he is saying
14 whatever you spent, we will pay for it. That is Clay Warner.
15 That is ALPA legal.

16 Now, Mark Hunnibell was another video I played you.
17 He lives in Connecticut. And in his testimony he said under
18 oath that he came to learn after the fact that if ALPA had
19 paid those expenses, it would have violated the law. That
20 was the pilots' testimony. He came to learn that. He
21 claimed he didn't know it at the time, but he came to know it
22 later. Here is ALPA legal.

23 Mr. Warner, setting up a document where ALPA is
24 pledging to do just that. If the American pilots are
25 correct, he is pledging to violate the law.

1 Next document, 148 FFF. This is, remember
2 Rindfleisch send his email to Warner and Barnhurst. Here is
3 Barnhurst's edit. Correction. It is the IACP, not CALPA.
4 That is a reference to the Continental pilot union. He is
5 just saying you got the acronym wrong. So this was reviewed
6 by legal and finance and no one had a problem with Mr.
7 Rindfleisch telling those pilots you are going to get paid.

8 And that is exactly what happened, if you look at
9 148 GGG.

10 This is the end of the road on this story.
11 December 21. This is the full email that went to Hunnibell
12 and Clark and Rindfleisch. And you see at the end there that
13 Mr. Warner's edit on the reimbursement was made. Again, I
14 must admit to you guys, we will reimburse you for the
15 expenses you already incurred when we receive them.

16 And we know from the March 19 email preceding that
17 they were on their way, the receipts were on their way.

18 I want to move forward now to 148 XXX. This is
19 another email from Mr. Clark to Mr. Rindfleisch dated January
20 15. What does he say? Ron, I received several cards since
21 producing the majority I had to ALPA late last year. I will
22 extend them to you if that is acceptable and Mark will
23 provide an updated database. Please advise.

24 He has got more cards he has collected and he asked
25 ALPA, what did you want me to do with them? Don't know what

1 the response was, but we do know this, the cards, however
2 many there were, they are not here any more. Remember Mr.
3 Rosen testified, we asked him what happened to the cards? I
4 don't know. Looked everywhere, can't find them. That was
5 his answer. Can't find them. Rindfleisch denied he ever had
6 it in his deposition. And here is an email that says, hey,
7 those cards I give you last year, I got some more. Do you
8 want them?

9 Okay. And then going to 148, I think it is 4 E's,
10 or is it five, 5 E's, 148, 5 E's. This is the last on this
11 subject here. This is April 30 of '02. John: Thanks, John.
12 John Clark. To Ron. Add this to the reimbursement request,
13 please. He has another receipt. So he updated ALPA on his
14 receipts and the cards, they are not here.

15 The evidence, there is evidence in this case that
16 ALPA had its hands all over this campaign.

17 And promises go to pay for it. They are updating
18 on it daily, the American pilots are emailing with John Clark
19 and Mark Hunnibell and others. ALPA had its hands all over
20 it.

21 Was there a bad faith motive for what ALPA did and
22 didn't do to protect the TWA pilots seniority? That is again
23 for you to decide.

24 So we talk about arbitrariness, we talked about bad
25 faith.

1 There is one other issue I need to talk to you
2 about and that is the issue of injury. The Judge will
3 instruct you that you should find that ALPA caused injury to
4 TWA pilots if you believe that but for ALPA's breach, the
5 overall outcome of the seniority integration would have been
6 more favorable to the TWA pilots. But for ALPA's breach, the
7 integration would have been more favorable.

8 Now, before I get into the evidence on that, I want
9 to talk to you about the burden of proof just a bit. You
10 will be instructed that should you find a fact that -- that
11 you should -- you will be instructed that you should find a
12 fact as true if you believe it is more likely true than not.
13 No matter how slightly the scale tips in favor on that fact.
14 No matter how slightly, if you believe it is more likely true
15 you need to find it a fact. That is that instruction.

16 You will also be instructed to use your common
17 sense. You don't believe that out here. You take it in with
18 you.

19 So on this injury question, after applying your
20 common sense, you need to determine whether or not plaintiffs
21 proved some injuries. Well, we proved that the 1,200 TWA
22 pilots got furloughed. Everyone that got stapled got
23 furloughed.

24 We have to show that ALPA, TWA pilots would have
25 gotten a more favorable integration had ALPA not breached its

1 duty of fair representation.

2 Now, what is the evidence of that? What is the
3 evidence that there could have been a more favorable
4 integration? There was direct testimony from Mr. Day about
5 that. He said I would have expected, I think his testimony,
6 his answer was it would have been reasonable to believe that
7 we would have got a better deal closer to the Tannen proposal
8 had ALPA done the things we asked for and gave us the
9 leverage we needed.

10 Mike Day told you that. He was the only one in the
11 room with the American side. ALPA produced nobody in that
12 position. They give you four witnesses, four lawyers that
13 were completely uninvolved. Mike Day told you we could have
14 got a better deal.

15 And what is the evidence to support that
16 conclusion? What is the evidence of it? It is in the, the
17 proof is in the pudding. It really is. The first offer made
18 by the APA was on March 1st and they offered up staple 1,500.
19 About. Two thirds.

20 They didn't come off that until April 18. They
21 lowered the staple by 50. But at least that is movement in
22 the right direction. They do that every month, we will,
23 after a year we will have a fair deal. So this is curious,
24 this is after the scope waiver, pilots give up their best
25 leverage and they come back with a better proposal. It is

1 still obnoxious from the TWA pilots' side, but that is what
2 they did.

3 Now, what happened after that? They go into this
4 facilitated negotiation process, all throughout the summer,
5 meeting after meeting after meeting. I don't know how many
6 meetings. I know it was more than ten, Mike Day testified
7 to. And throughout that the APA does nothing. They don't
8 come off this position one iota to out that whole process in
9 the summer.

10 And then after 9-11, a week after 9-11, they write
11 a letter to Mike Day saying we are done. We are done talking
12 to you, we are going to go to our board, and we are going to
13 do what we want. At that point, 14, 15, was still the offer.
14 What happened next? The TWA pilots got involved. They went
15 to Senator Bond, got him involved. And Bond announces this
16 bill that would give arbitration to the TWA pilots, had it
17 passed. That was on October first that that announcement was
18 made.

19 This is just some Senator saying hey, I got this
20 bill, I put on the floor.

21 What happened next? American pilots come back to
22 the table on their own and say hey, we got a better deal, you
23 are going to love it. And that better deal, it was better,
24 was Supplement CC. The staple lowered to 1,200. And it
25 included in this notion of fencing all the TWA pilots in St.

1 Louis, which not only kept them all in St. Louis corralled
2 there but it kept American pilots out of St. Louis, which
3 meant they couldn't bid there which was some sort of benefit
4 for the TWA guys.

5 So on the strength of the TWA pilots doing nothing
6 other than get Senator Bond to introduce some legislation,
7 the American pilots lower the staple by 250, and offer this
8 notion of a fence in St. Louis. That was done with just the
9 leverage of maybe the senator's bill might get passed some
10 day. That was the only leverage. That was all that had
11 changed. What if ALPA had gotten involved and done any of
12 the things, or all of the things, that were requested of it?
13 Litigate, boycott. All of it. Would there have been a
14 better deal? A more favorable deal? Again, that is up to
15 you to decide. But again, you must use your common sense and
16 look at what happened.

17 If you lower that staple by one pilot, that is
18 injury.

19 Folks, I am finished. Okay. I am sure you have
20 heard enough. And I am going to sit down now, and the Judge
21 is going to read some instructions to you and we will see you
22 when you get back.

23 THE COURT: Thank you, Mr. Press. We will take a
24 short break now. About 15 minutes. It is 25 of 11. About
25 ten of 11. Then I will read my charge of the law to you.

1 And then the case is yours. Don't discuss the case among
2 yourselves until you have heard my charge. All rise.

3 (Jury leaves the courtroom)

4 THE COURT: Mr. Fram.

5 MR. FRAM: Two things. One, I did write out a
6 proposed insert to deal with this with this issue of witness
7 vouching, if I can hand it up. I indicated, your Honor,
8 where I would request that the Court include it. It would be
9 on page 10, is where I was suggesting.

10 THE COURT: Have they seen it?

11 MR. FRAM: No, they haven't, your Honor.

12 THE COURT: While they are looking at it, you have
13 a second point.

14 MR. FRAM: I did, your Honor. I thought we talked
15 about the advice in the charge that if you find by a
16 preponderance of the evidence that ALPA breached, then you
17 must. And the converse. I am looking, your Honor, at the
18 bottom of page 18 of the charge.

19 THE COURT: Yes.

20 MR. FRAM: I thought that paragraph was going to
21 move and be part of what you of this --

22 THE COURT: Page 19, not 18.

23 MR. FRAM: I am looking at the bottom of 18.

24 THE COURT: Look at 19.

25 MR. FRAM: 19 is what we discussed. I guess my

1 concern, is if you look at the bottom of 18 you have the
2 first half of what was still, what was there before. I
3 thought that last sentence on the bottom of 18 was going to
4 come out. That is what was being consolidated into section
5 18.

6 MS. RODRIGUEZ: As jurors you have the duty to
7 consult with each other?

8 MR. FRAM: No. This is what I am looking at. Do
9 you have the same draft?

10 MS. RODRIGUEZ: You have an old draft.

11 MR. FRAM: No, I have what the Judge give me this
12 morning.

13 MS. RODRIGUEZ: I have an old draft.

14 MR. FRAM: The one that says final. Pardon us for
15 a minute.

16 (Off-the-record discussion).

17 THE COURT: I think he is right. I am taking that
18 out, the bottom of 18, the first two lines of 19.

19 MR. FRAM: Yes. Thank you very much, your Honor.

20 THE COURT: Now, let me have your comment on the
21 proposed addition to the charge on page 10 that Mr. Fram
22 wrote out which I will mark as an exhibit.

23 MR. FRAM: Thank you, your Honor.

24 THE COURT: Your writing is pretty legible.

25 (Off the record discussion)

1 THE COURT: I will read it from Mr. Press's
2 summation, the part you objected to.

3 "And my clients, he called them all liars. I want
4 you to remember some of them are here. Alan, Sean Clarke,
5 please stand up. Sally Young. Alan Altman. Matt Comlish.
6 They are all liars. That is what he just told you. You
7 remember these people. They sat there, right in your chair
8 and looked you all in the eyes and told you what they
9 believed. They told you what they remembered, to the best of
10 their ability, stuff that happened ten years ago.

11 " Their story was completely consistent, unlike
12 some of the ALPA witnesses that we will get into. That is
13 who they are calling liars to you today. And then this
14 charming fellow, remember him? This was Howard. Howard
15 Hollander. He is a liar, too. He is the fellow that,
16 remember, that fateful date, April 2, he followed advisors
17 out of the conference room. They went in to have a
18 conference call and he put his ear on the wall, the room next
19 door, and he overheard what they were saying, which wasn't
20 very nice. But that is who they are now trying to portray as
21 just completely dishonest people. And I hope you don't
22 believe it. These people are serious, credible people. They
23 came in here today and told you the truth to the best that
24 they could, and they are no faction.

25 "Who is the faction? I mean, come on. Steve

1 Rautenberg is the faction. He is the one that got run right
2 out of his office because of the things he did there at the
3 end trying to get Supplement CC passed. After the full MEC
4 had just rejected it two weeks earlier. Remember all of
5 that. Steve Rautenberg is the faction. He is entitled to
6 his opinion. And no one could quarrel with somebody wanting
7 to have their own opinion. But don't come in here, Mr. Fram,
8 and recreate facts. Mr. Rautenberg was the faction. And his
9 decision was so unpopular, remember what happened? There was
10 that recall vote in St. Louis. It was the most attended two-
11 day meeting --"

12 Basically, it was the part about these are serious
13 people.

14 MS. RODRIGUEZ: Serious people.

15 MR. JACOBSON: In the context of you have seen them
16 on the stand. He is referring back to the testimony. I
17 don't think the rules require that every moment you refer to
18 the evidence to say the phrase, "the evidence shows." In
19 testing them he is not saying I have personal knowledge that
20 these people are honest, that these people are truthful. I
21 think that he is trying to make a mountain out of a mole
22 hill. One line where he doesn't refer back to the evidence?

23 THE COURT: But I can put a ski lift on it. If we
24 make it a mountain.

25 MR. JACOBSON: It is one line out of, in an entire

1 opening, which was referring properly to the evidence, he is
2 not personally vouching for them. There is no requirement
3 that a person preface every question with, "the evidence will
4 show you."

5 I think that the proposed instruction is trying to
6 get a fly with a shotgun. It is totally out of line.

7 THE COURT: Can I have it back, please?

8 MR. FRAM: Your Honor, what does --

9 THE COURT: Mark this as a C exhibit. This is, for
10 the record, C 5 is the proposed additional charge that Mr.
11 Fram wants as a follow-up to the letter of yesterday and his
12 comments of Mr. Press that he considers from Mr. Press to be
13 vouching.

14 MR. FRAM: Your Honor, just to respond to counsel's
15 comment. What does RPC 3.40 mean? It specifically provides
16 that a lawyer cannot say his personal opinions, and that is
17 what happened. The comment after --

18 THE COURT: Well, he did reference, for instance, I
19 referred to the consistency of all the testimony. And one of
20 the things I tell the jury earlier on is that you should
21 analyze for the one witness, whether one witness is
22 consistent with other witnesses, or inconsistent with other
23 witnesses, in assessing credibility. I say that in my
24 general comments, in section 10.

25 Anything else you want to add?

1 MR. FRAM: No. I think your Honor understands the
2 issue.

3 THE COURT: No, I understand it. Everyone
4 understands it. As lawyers, we all understand the issue.

5 All right.

6 I think Mr. Press came close to the line of
7 vouching, in other words, talking credibility, without -- but
8 I think in the overall context of his comments, it was not
9 serious enough for me to put my thumb in there and finger
10 another lawyer as having broken the rules. That puts my
11 thumb on the scale.

12 MR. PRESS: Thank you, your Honor.

13 THE COURT: Too much, I think much too heavily to
14 do that.

15 I am not going to give the suggested charge. There
16 was reference to the record in there. There was reference
17 particularly to the consistency and the contrast of the
18 consistency of the pilots' testimony with the inconsistency
19 that he said would be the defendant's position. And Mr.
20 Press certainly today didn't even get close to the line. He
21 did everything he was supposed to do. And to say, somebody
22 must have circled it, it wasn't me.

23 MS. RODRIGUEZ: It was me.

24 THE COURT: Okay. It wasn't me that did that on
25 the exhibit. It says I instruct you that it is improper for

1 an attorney to state his personal opinion, et cetera.

2 As I say, when I have two attorneys and I
3 specifically criticize one attorney for improper behavior,
4 however minor the point may be, or however major it may be,
5 it is putting my thumb on the scale more than is necessary
6 here. You know what I mean. We went through it and we heard
7 about Duane Woerth -- not Duane Woerth, Roland's Wilder's
8 presence or absence on April 2, and that was all tied to the
9 record.

10 I am satisfied that this will not, that Mr. Press's
11 comments will not improperly influence the jury beyond what
12 is legitimate argument. So I am going to deny the request.

13 We have it on the record.

14 Anything else by anybody?

15 MR. PRESS: Not from the plaintiffs, Judge.

16 MR. FRAM: Your Honor, I express concern as well
17 about the issue of the extension. I think your Honor has
18 addressed it already.

19 THE COURT: Say it again.

20 MR. FRAM: The issue of Mr. Press's statements
21 yesterday about an extension. I think your Honor ruled on
22 that before.

23 THE COURT: Yeah, I did rule on it before. As I
24 say, I think, the best I can divine out of it, because the
25 facts are a little murky, is that the judge probably could

1 have extended it some time, but not as of right. So I think
2 Mr. Press was wrong, when he said they have a right.

3 MR. PRESS: Honestly, that is the way I remember
4 the testimony coming, Judge, honestly.

5 THE COURT: It may be there was testimony about
6 that. I don't recall that. I don't want to say that that
7 wasn't in the testimony.

8 MR. PRESS: And I am not saying it was. That is
9 honestly the way I remember it.

10 THE COURT: I don't remember one way or the other.

11 MR. PRESS: When the testimony came in, I wrote on
12 my notes, so there was time to have a vote.

13 THE COURT: There may have been testimony. I
14 simply don't remember. But reading the rule, I think the
15 Judge did have four or five days that they could have
16 extended it. It is murky enough, also in the context of this
17 closing, it is a pretty minor point. I mean, the notion that
18 somehow or other that is going to sway the scale, that they
19 could have gotten an extension on the 1113. In the context
20 of this case it is not going to rise or fall on that. So I
21 did rule on that.

22 All right. Let's take another five minutes. Note
23 for the record that I am, the bottom of page 18, the top of
24 page 19, that paragraph I am taking out, it is repeated just
25 a few lines later, in section 18. See you shortly

1 (Recess)

2 (The jury enters the courtroom.)

3 THE COURT: I have had a secret request to speak
4 into the microphone.

5 Ladies and gentlemen of the jury, now that you have
6 heard all the evidence to be received in this trial, and the
7 arguments of counsel, it becomes my duty and privilege to
8 give you the final instructions of the Court as to the law
9 that will guide you in your decisions.

10 The plaintiffs in this matter are several
11 individuals, Howard Hollander, Sally Young, Patrick Brady,
12 Ted Case, and Michael Finucan.

13 They are former pilots for TWA and TWA, LLC. In
14 this action, these individuals are pursuing this litigation
15 not only on their own behalf, but they also represent a class
16 of plaintiffs consisting of some of the approximately 2,300
17 individuals who were pilots of TWA as of April of 2002. As
18 you have heard, the defendant, Air Line Pilots Association
19 International, which has been referred to as ALPA, is a
20 union and represented the pilots of TWA up until April of
21 2002.

22 During the course of these instructions I will
23 refer to the plaintiffs as plaintiffs, or the class, and I
24 will refer to the defendant as ALPA.

25 All of the instructions of law given to you by the

1 court, those given to you at the beginning of the trial,
2 those given to you during the trial, and these final
3 instructions, must guide and govern your deliberations.

4 It is your duty as jurors to follow the law as
5 stated in all of the instructions of the Court and to apply
6 these rules of law to the fact as you find them from the
7 evidence received during the trial.

8 You are not to single out one instruction alone as
9 stating the law, but must consider the instructions as a
10 whole. You should construe each of the instructions in light
11 of and in harmony with the other instructions and you should
12 apply the instructions as a whole to the evidence. The order
13 in which the instructions are given has no significance, and
14 is no indication of their relative importance.

15 Counsel have quite properly referred to some of the
16 applicable rules of law in their closing arguments to you.
17 If any difference appears to you between the law as stated by
18 counsel and that as stated by the Court in these
19 instructions, you are to be governed by the instructions
20 given to you by the Court.

21 You must not be concerned with the wisdom of any
22 rule of law stated by the Court. Regardless of any opinion
23 you may have as to what the law ought to be, it would be a
24 violation of your sworn duty to base any part of your verdict
25 upon any view of the law other than that given in these

1 instructions. It also would be a violation of your sworn
2 duty as the judges of the facts to base your verdict upon
3 anything but the evidence received in the case. You were
4 chosen as jurors for this trial in order to evaluate the
5 evidence received and to decide the factual questions
6 presented by the respective positions of the plaintiffs and
7 ALPA.

8 In deciding the issues presented to you for
9 decision in this trial, you must not be swayed by bias,
10 prejudice, or sympathy for or against any of the parties, and
11 not influenced by public opinion.

12 Justice through trial by jury depends upon the
13 willingness of each individual juror to evaluate the same
14 evidence presented to all the jurors here in the courtroom,
15 and to arrive at a verdict by applying the same rules of law
16 that I am giving you now in these instructions.

17 At times during the trial you saw lawyers make
18 objections to questions asked by other lawyers, and to
19 answers by witnesses. This simply meant that the lawyers
20 were asking me to make a decision on a rule of law. Do not
21 draw any conclusion from such objections or from my rulings
22 on them. These related only to the legal questions that I
23 had to determine and should not influence your thinking.

24 When I sustained an objection to a question, the
25 witness was not allowed to answer it. Do not attempt to

1 guess what answer might have been given had I allowed the
2 question to be answered. Similarly, when I told you not to
3 consider a particular statement, you were told to put that
4 statement out of your mind and you may not refer to that
5 statement in your deliberations.

6 During the course of the trial we have from time to
7 time held conferences with the attorneys at sidebar out of
8 the hearing, hopefully, of the jury. These conferences were
9 held to resolve legal issues which arose during the trial.
10 Please do not speculate about what was said or decided at
11 these sidebar conferences. Do not consider them in any way
12 in reaching your verdict.

13 At times during trial I asked questions of
14 witnesses. These questions should not be taken as an
15 indication that I have any opinion about the facts in this
16 case. Indeed, if I have said or done anything during the
17 trial, or in instructing you now, that leads you to believe
18 that I am inclined to favor the case of the plaintiffs or the
19 defendant, you must remove that impression from your minds
20 and not permit yourselves to be influenced by it because none
21 was intended to be created. There is nothing particularly
22 different in the way that a juror should consider the
23 evidence in a trial from that in which any reasonable and
24 careful person would treat any very important question that
25 must be resolved by examining facts, opinions, and evidence.

1 You are expected to use your good sense in
2 considering and evaluating the evidence in the case for only
3 those purposes for which it has been received, and to give
4 such evidence a reasonable and fair construction in the light
5 of your common knowledge of human nature.

6 Keep in mind that it would be a violation of your
7 sworn duty to base a verdict upon anything other than the
8 evidence received in the case and the instructions of the
9 Court.

10 The party with the burden of proof on any given
11 issue has the burden of proving every disputed element of his
12 or her claim to you by a preponderance of the evidence. If
13 you conclude that the party bearing the burden of proof has
14 failed to establish any required element of that claim by a
15 preponderance of the evidence, you must decide against that
16 party on the issue you are considering.

17 What does preponderance of evidence mean? To
18 establish a fact by a preponderance of the evidence means to
19 prove that a fact is more likely true than not. A
20 preponderance of the evidence means the greater weight of the
21 evidence. It refers to the quality and persuasiveness of the
22 testimonial and documentary evidence, not to the number of
23 exhibits or witnesses.

24 If you find that the credible evidence on a given
25 issue is evenly divided between the parties, such that it is

1 equally probable that one side is right and that the other
2 side is right, then you must decide that issue against the
3 party having the burden of proof.

4 That is because the party bearing this burden must
5 prove more than a simple equality of evidence. Plaintiffs
6 must prove the issue by a preponderance of the evidence.

7 On the other hand, the party with the burden of
8 proof need prove no more than a preponderance. So long as
9 you find the scale tips, however slightly, in favor of the
10 party with the burden of proof, that what the party claims is
11 more likely true than not true, then the element will have
12 been proved by a preponderance of the evidence.

13 The evidence in this case consists of the sworn
14 testimony of the witnesses, regardless of who may have called
15 them, and all exhibits received in evidence, regardless of
16 who may have produced them.

17 You have also heard testimony in the form of
18 depositions which have been received into evidence. A
19 deposition is simply a procedure in which the attorneys for
20 one side question a witness or an adversary party under oath
21 before a court stenographer prior to trial.

22 A video deposition is a procedure where attorneys
23 question a witness under oath before a court stenographer
24 prior to trial while the whole proceeding is simultaneously
25 taped by a specially trained video operator.

1 Deposition testimony is entitled to the same weight
2 as live testimony, and should be evaluated by you in the same
3 manner as you would evaluate any other testimony.

4 During the trial several items were received into
5 evidence as exhibits. These exhibits will be sent into the
6 jury room with you when you begin to deliberate.

7 Examine the exhibits if you think doing so will
8 help your deliberations. Any proposed testimony or proposed
9 exhibit to which an objection was sustained by the Court and
10 any testimony or exhibit ordered stricken by the Court must
11 be entirely disregarded.

12 Likewise, anything you may have seen or heard
13 outside the courtroom is not proper evidence and must be
14 entirely disregarded.

15 Questions and statements of the Court or counsel,
16 and objections and arguments of counsel, are not evidence in
17 the case. If the Court or a lawyer asks a question on cross
18 examination which incorporates a statement which assumed
19 certain facts to be true, the question is not evidence of
20 those facts if the witness denies the truth of the statement
21 in his or her answer.

22 You may consider the facts incorporated into a
23 question only if the answer of the witness recognizes their
24 truth. In short, questions are not evidence, answers are.

25 You are to base your verdict only on the evidence

1 received in the case. In your consideration of the evidence
2 received, however, you are not limited to the bald statements
3 of the witnesses or the bald assertions in the exhibits. In
4 other words, you are not limited solely to what you see or
5 hear as the witnesses testify or as the exhibits are
6 admitted.

7 If you find a fact has been proven, you are
8 permitted to draw from that fact such reasonable inferences
9 as you feel are justified in the light of your experience and
10 common sense. Inferences are simply deductions or
11 conclusions which reason or common sense lead the jury to
12 draw from the facts proven in the case.

13 There are two types of evidence which are generally
14 presented during trial. Direct evidence and circumstantial
15 evidence.

16 Direct evidence is the testimony of a person who
17 asserts or claims to have actual knowledge of a fact such as
18 an eyewitness. Circumstantial evidence is proof of a chain
19 of facts and circumstances indicating the existence or
20 nonexistence of a fact. The law generally makes absolutely
21 no distinction between the weight or value to be given either
22 to direct or circumstantial evidence, but simply requires
23 that you find the facts from a preponderance of all the
24 evidence, both direct and circumstantial.

25 You should weigh all the evidence in the case.

1 After weighing all the evidence you must decide if plaintiffs
2 have satisfied their burden of proving each element of the
3 case by a preponderance of the evidence.

4 If any reference by the Court or by counsel to
5 matters of testimony or exhibits does not coincide with your
6 own recollection of that evidence, it is your recollection
7 which should control during your deliberations. And not the
8 statements of the Court or of counsel. You are the sole
9 judges of the evidence received in this case.

10 Any notes you have taken during this trial are only
11 aids to your memory. If your memory differs from your notes
12 you should rely on your memory and not on the notes. The
13 notes are not evidence. If you have not taken notes you
14 should rely on your independent recollection of the evidence
15 and should not be unduly influenced by the notes of other
16 jurors. Notes are not entitled to any greater weight than
17 the recollection or impression of each juror about the
18 testimony.

19 There are times when you are asked to draw
20 different inferences from the same facts. It is for you and
21 you alone to decide what reasonable inferences you choose to
22 draw from the evidence in this case.

23 Now, I have said that you must consider all of the
24 evidence. That does not mean, however, that you must accept
25 all of the evidence as true or accurate. You are the sole

1 judges of the credibility or believability of each of each
2 witness, and the weight to be given to his or her testimony.

3 You are called upon to resolve various issues of
4 fact concerning the respective allegations of the parties.
5 How do you determine where the truth lies? Your
6 determination of the credibility or believability of a
7 witness depends largely upon the impression the witness made
8 upon you as to whether or not he or she was giving an
9 accurate and truthful version of what occurred. In weighing
10 the testimony of a witness you should consider his or her
11 interest, if any, in the outcome of the case, his or her
12 manner of testifying, and the extent to which he or she has
13 been supported or contradicted by other credible evidence.

14 You may accept or reject the testimony of any
15 witness in whole or in part.

16 You must use your common sense, your good judgment,
17 and your experience. In other words, what you must try to do
18 is size a person up, just as you would do in any important
19 matter where you are undertaking to determine whether or not
20 a person is truthful, candid, and straightforward.

21 In passing upon the credibility of a witness, you
22 may also take into account inconsistencies or contradictions
23 as to material matters in his or her own testimony, the
24 length of time which has passed since the event testified
25 about, and any conflict between his or her testimony and the

1 testimony of another witness.

2 A witness may be inaccurate, contradictory, or even
3 confused in some minor respects, and yet be entirely credible
4 in the essentials of his or her testimony. The ultimate
5 question for you to decide in passing upon credibility is did
6 the witness tell the truth? It is for you to say whether his
7 or her testimony at this trial is truthful in whole or in
8 part, in light of the demeanor, the explanation, and all of
9 the evidence in the case. If a witness is shown knowingly to
10 have testified falsely concerning any material matter, you
11 have a right to distrust such witness's testimony and other
12 particulars, and you may reject all of the testimony of that
13 witness, you may give it such credibility as you think it
14 deserves.

15 The weight of the evidence to prove a fact does
16 not necessarily depend on the number of witnesses who
17 testify. What is more important is how believable the
18 witnesses were and how much weight you think their testimony
19 deserves.

20 During the course of the trial the parties have
21 sometimes challenged the testimony of certain witnesses by
22 pointing to prior statements the witnesses made or allegedly
23 made. In considering this evidence you must separate those
24 prior statements into statements that were not made under
25 oath and statements that were made under oath.

1 You may consider prior statements that were not
2 made under oath solely for the purpose of impeachment. That
3 is, you may consider them only to help you decide if you
4 believe the witness's testimony.

5 For example, if a witness said something previously
6 that conflicts with what he or she said here in court, there
7 may be reason for you to doubt that witness's testimony.
8 That is for you to decide.

9 You are not permitted, however, to use those
10 earlier statements as affirmative substantive evidence in
11 this case.

12 If, however, the witness is a party, that is the
13 witness is one of the main plaintiffs, or is an officer,
14 employee, or agent of ALPA, then even their unsworn prior
15 tested statements may be treated by you as substantive
16 evidence in this case. Prior statements that were made under
17 oath, for example, at a deposition or at an affidavit or a
18 declaration, should be treated just as if they were made here
19 in court. You may consider them for the purposes of
20 impeachment, as above, but you may also consider them as
21 affirmative substantive evidence.

22 You may rely on these statements as much or as
23 little as you think proper. It is exclusively your duty to
24 determine whether the prior statement was inconsistent, and
25 if so, the significance of the inconsistency and how much

1 weight it should be given.

2 In this case, the TWA pilots claim that ALPA, their
3 former union, breached its duty of fair representation. ALPA
4 denies these claims. ALPA has the union and exclusive
5 bargaining representative to the TWA pilots was required
6 under the law to fairly represent the TWA pilots. This duty
7 is known as the duty of fair representation, and requires a
8 union to act in the best interest of its members in a manner
9 I will describe to you hereafter.

10 The TWA pilots claim that ALPA breached its duty of
11 fair representation by failing to protect the TWA pilot
12 seniority as part of TWA's merger with American Airlines, and
13 the subsequent merger of the two pilot groups. ALPA denies
14 these claims and contends that it represented the TWA pilots
15 appropriately under the difficult circumstances presented by
16 TWA's poor financial situation.

17 In order to prove their case the TWA pilots will
18 have to establish by a preponderance of the evidence that
19 ALPA's representation of the TWA pilots was either arbitrary
20 or motivated by bad faith.

21 If plaintiffs prove that ALPA's conduct was
22 arbitrary or motivated by bad faith, they must then prove a
23 tangible injury resulting from that conduct in order to
24 prevail. A labor union can only be held liable for a breach
25 of its duty of fair representation if its breach directly

1 causes injury to an individual or group of whom, to whom the
2 duty is owed.

3 In this case, proving injury means that plaintiffs
4 are required to demonstrate that but for ALPA's breach of its
5 duty of fair representation, the overall outcome of the
6 integration of the TWA pilots into American would have been
7 more favorable.

8 As I mentioned earlier, this case is being pursued
9 by the named plaintiffs on behalf of a class of certain of
10 the former TWA pilots. While the outcome of this case will
11 affect these members of this class, this issue should not
12 influence your decision-making on whether the plaintiffs have
13 proved all the elements of their case. You should not view
14 the fact that this is a class action as making the
15 plaintiffs' claims any more or less true or likely. You must
16 evaluate the proofs as they are presented to you without
17 consideration of the class action status.

18 When a union is the exclusive bargaining
19 representative for a group of employees, the law requires
20 that that the law requires that union to represent the
21 interests of the employees in a proper manner. This
22 requirement is known as the duty of fair representation.
23 ALPA owed a duty of fair representation to the TWA pilots.

24 The primary concern that the duty of fair
25 representation was designed to address is that individual

1 employees not be deprived of all effective means of
2 protecting their own interests. A union owes its duty of
3 fair representation to every employee within the bargaining
4 unit that it represents.

5 Personal hostility alone is insufficient to
6 establish unfair representation if the union's representation
7 was adequate, and there is no substantial evidence that
8 personal hostility tainted the union's actions. In this
9 case, you must decide whether ALPA breached its duty of fair
10 representation. A union breaches its duty of fair
11 representation when its conduct towards a member or members
12 of the bargaining unit it represents is arbitrary, in bad
13 faith, or discriminatory.

14 There is no contention that ALPA acted in a
15 discriminatory manner towards the TWA pilots. You must
16 evaluate ALPA's decisions and actions only in light of the
17 legal and factual informational ALPA possessed at the time it
18 made those decisions and took those actions. Therefore, any
19 review of the union actions in the context of litigation must
20 be deferential.

21 This deferential review is designed to recognize
22 the wide latitude that negotiators need for the effective
23 performance of their bargaining responsibility. Therefore,
24 in evaluating whether plaintiffs have demonstrated their
25 claim for breach of the duty of fair representation, you must

1 not rely on hindsight.

2 I should emphasize to you that in order to prove
3 that ALPA violated its duty of fair representation to the TWA
4 pilots, plaintiffs must prove that ALPA did more than simply
5 act negligently or without proper care in dealing with the
6 TWA American Airlines merger. ALPA does not need to
7 establish that it had any particular reason for any of the
8 actions it took, or that it was motivated by good faith. It
9 is the plaintiff's burden to prove that ALPA acted
10 arbitrarily, or was motivated by bad faith toward the TWA
11 pilots it represented.

12 A union's conduct is arbitrary if, looking at all
13 the evidence presented, it is so far outside a wide range of
14 reasonableness that it is irrational. A union acts
15 arbitrarily when it makes decisions based on considerations
16 that are not legitimate union objectives. Examples of
17 arbitrary conduct include things like acting in a perfunctory
18 or superficial manner.

19 A union's conduct is made in bad faith when it acts
20 or fails to act out of hostility or ill will towards the
21 employees it represents. The intent of the union is
22 critical in determining whether it acted in bad faith. In
23 order for to you find that ALPA acted in bad faith, you must
24 find that ALPA had a bad faith motive. Examples of bad faith
25 include things like deliberately making misleading statements

1 to employees, not disclosing conflicts of interest, acting
2 with hostility towards union members, and ignoring union
3 policies and labor negotiations, if such actions are the
4 result of a bad-faith motive described above.

5 You have heard testimony that ALPA refused to
6 institute litigation suggested by the attorneys for the TWA
7 MEC, Roland Wilder. Individual union members do not have the
8 right to insist that a union file litigation. The basic test
9 is one of reasonableness. So long as the union acts in good
10 faith, the law permits the union to exercise broad discretion
11 in determining whether litigation should be instituted. The
12 union may consider, among other factors, the cost of
13 proceeding, the likelihood of success, and the potential
14 adverse consequences of pursuing litigation, even if
15 meritorious. Thus, even if a properly proposed legal action
16 has merit, mere negligence or existence of poor judgment on
17 the part of a union does not constitute a breach of its duty
18 of fair representation.

19 On the other hand, when a union acts arbitrarily or
20 in bad faith in refusing to pursue properly proposed legal
21 action, it violates a duty it has to represent fairly the
22 union members.

23 The fact that the Bond bill was not enacted into
24 law is not proof that ALPA breached its duty of fair
25 representation. Nonetheless, when deciding whether ALPA

1 breached its duty of fair representation you can consider
2 what actions ALPA took or did not take in support of a Bond
3 bill, and its motivations for such action, or inaction.

4 If you find by a preponderance of the evidence,
5 looking at all of the evidence presented, that ALPA breached
6 its duty of fair representation by acting arbitrarily or in
7 bad faith, and that ALPA's conduct caused injury to some or
8 all of the TWA pilots, you must find for the plaintiffs.

9 If you find that plaintiffs have failed to meet
10 this burden of proof, you must find for ALPA.

11 When you retire to the jury room to deliberate, you
12 may take with you these instructions. I will make three or
13 four copies and send them in to you. When you retire to the
14 jury room to deliberate you may take with you these
15 instructions, your notes, and the exhibits that the Court has
16 admitted into evidence. You should select one member of the
17 jury as your foreperson. That person will preside over the
18 deliberations and speak for you here in open court.

19 You have two main duties as jurors. The first one
20 is to decide what the facts are from the evidence that you
21 saw and heard here in court. Deciding what the facts are is
22 your job, not mine. And nothing that I have said or done
23 during this trial was meant to influence your decision about
24 the facts in any way.

25 Your second duty is to take the law that I give

1 you, apply it to the facts, and decide if, under the
2 appropriate burden of proof, the TWA pilots have established
3 their claim. It is my job to instruct you about the law and
4 you are bound by the oath you took at the beginning of the
5 trial to follow the instructions that I give you, even if you
6 personally disagree with them. This includes the
7 instructions I gave you before and during the trial and these
8 instructions.

9 All the instructions are important, and you should
10 consider them together as a whole. Perform these duties
11 fairly, do not let bias, sympathy or prejudice that you may
12 feel towards one side or the other influence your decision in
13 any way. Jurors have a duty to consult with each other and
14 to deliberate with the intention of reaching a verdict. Each
15 of you must decide the case for yourself, but only after a
16 full and impartial consideration of all the evidence with
17 your fellow jurors.

18 Listen to each carefully. In the course of your
19 deliberations you should feel free to reexamine your own
20 views, and to change your opinion based on the evidence. But
21 you should not give up your honest convictions about the
22 evidence just because of the opinions of your fellow jurors.
23 Nor should you change your mind just for the purpose of
24 obtaining enough votes for a verdict. You are not partisans.
25 You are judges, impartial judges of the fact. Your sole

1 interest is to ascertain the truth from the evidence in the
2 case.

3 Under no circumstances should your deliberations be
4 affected or diverted by any appeal to bias, passion or
5 prejudice for or against any of the parties, or influenced by
6 any pity or sympathy in favor of them. The law does not
7 permit jurors to be governed by sympathy, prejudice or public
8 opinion. A corporation or other association, including a
9 labor union, and all other persons, are equal before the law,
10 and must be treated as equals in a court of justice.

11 When you start deliberations do not talk to the
12 jury officer, or to me, or to anyone but each other about the
13 case. During deliberations you must not communicate with or
14 provide any information to anyone by any means about this
15 case. You may not use any electronic device or media, such
16 as a cell phone, smart phone, or computers of any kind.

17 I am going to ad lib here.

18 If anyone is caught twittering or Googling, I will
19 put an earphone in their ear for the rest of their lives and
20 they will have to listen to Twitter nonstop 24 hours a day.
21 Okay.

22 The internet, do not use the internet, and any
23 internet services or text or instant messaging services or
24 internet chat room, blog, website, social networking services
25 to communicate to anyone any information about this case, or

1 to conduct research about this case, until I accept your
2 verdict.

3 If you have any questions or messages for me you
4 must write them on a piece of paper, have the foreperson sign
5 them, and give them to the jury officer. The officer will
6 give them to me, and I will respond as soon as I can. I may
7 have to talk to the lawyers about what you have asked, so it
8 may take some time to get back to you.

9 One more thing about messages. Never -- listen,
10 never write down or tell anyone how you stand on your votes.
11 For example, do not write down or tell anyone that a certain
12 number is voting one way or another. Your vote should stay
13 secret until you are finished.

14 Your verdict must represent the considered judgment
15 of each juror. In order for you as a jury to return a
16 verdict, each juror must agree to the verdict. Your verdict
17 must be unanimous.

18 A verdict form has been prepared for you. It has,
19 I say, it has a series of questions, it has only two
20 questions for you to answer. You will take this form to the
21 jury room and when you have reached a unanimous verdict --
22 when you reached unanimous agreement as to your verdict, you
23 will fill it out and have your foreperson date and sign the
24 form.

25 Unless I direct you otherwise, do not reveal your

1 answers until you are discharged. After you have reached a
2 verdict you are not required to talk with anyone about the
3 case, unless I order you to. Once again, I want to remind
4 you that nothing about my instructions, or nothing about the
5 form of the verdict, is intended to suggest or convey in any
6 way or manner what I think your verdict should be. It is
7 your sole and exclusive duty and responsibility to determine
8 the verdict.

9 Now, I just for a minute want to go over the
10 verdict sheet with you. We will send in six or seven copies
11 of it. Use some of them as scrap paper.

12 It says jury verdict here. It is two questions.

13 The first question is:

14 1: Did defendant Air Line Pilots Association
15 violate its duty of fair representation to the TWA pilots?

16 ANSWER: Yes, no.

17 Then there is an instruction that you must read.
18 If you answered yes to question 1, proceed to question 2.

19 If you answered no to question 1, please stop.
20 Your deliberations are over.

21 The jury foreperson must sign the last page of the
22 verdict form.

23 Again, if you answered yes, then you go to the
24 second question.

25 Did defendant Air Line Pilots Association violation

1 of its duty of fair representation directly cause injury to
2 some of the TWA pilots?

3 "ANSWER: Yes, no.

4 Yes. No. Please stop. Your deliberations are
5 over. The jury foreperson will sign the last page of the
6 verdict form. Then you date it and the foreperson signs it.

7 If any of you have served on a jury before you must
8 disregard the facts and law of that case, and any verdict you
9 may have returned, because they have no application to this
10 case.

11 All cases are unique, and must be judged
12 independently. You are not permitted to compare them to
13 arrive at your verdict in this case. Your verdict here must
14 be based solely on the law I give to you and the evidence you
15 saw and heard in this courtroom.

16 You are instructed once more, if I have asked any
17 questions of any witness during the trial, or if I have said
18 or done anything during the trial or in the course of
19 instructing you now that suggests to you that I am inclined
20 to favor the case of the plaintiffs, or the defendant, you
21 must remove that impression from your minds, and not permit
22 yourselves to be influenced by it.

23 Nothing in these instructions or in the verdict
24 sheet prepared for your convenience is meant to suggest what
25 verdict I think you should find. That is not my

1 responsibility.

2 The determination of the verdict is the exclusive,
3 and essential duty of the jury.

4 You will be provided with a written copy of these
5 instructions, in fact, several written copies of these
6 instructions. Should you desire to consult the jury
7 deliberations.

8 The captions at the beginning of the various
9 sections or subsections are not part of the instructions.
10 And I didn't read them to you. And are not -- they are there
11 only for your convenience. You must not consider any
12 particular.

13 You must not consider any particular portion of
14 these instructions in isolation. Rather, you must apply all
15 the rules of law about which I have instructed you.

16 May I commend counsel for their actions in this
17 Court and for the respect which they have given the Court. I
18 wish also to complement and thank the jurors for their
19 patience and for their attention they have paid to the
20 witnesses, to the parties, and to this Court.

21 Again, if you have any questions for the Court,
22 please write them on a piece of paper and have your
23 foreperson give them to the United States marshals for
24 delivery to me.

25 Never attempt to communicate with the Court by any

1 other means than a signed writing. We are very generous. We
2 will provide you with pencils and paper. Bear in mind that
3 you are not to reveal to the Court or to any person how the
4 jury stands numerically or otherwise until you have reached a
5 unanimous verdict, I think I said this already, but can't
6 hurt to say it again. The form of your verdict, your verdict
7 must represent the considered judgment of each juror. In
8 order to return a verdict, it is necessary that each and
9 every juror agree. The verdict must be unanimous.

10 Jurors perform a very important financial in
11 deciding on your verdict. You are an arm of the government
12 here to do justice. There is nothing more sacred. Do your
13 duty conscientiously, according to your oath and according to
14 these instructions, and justice will be done.

15 And remember, that is first thing you do when you
16 get into the jury room, you have to elect a foreman, a
17 foreperson, I should say.

18 Now, I ask the parties to come to sidebar for the
19 last time.

20 (At sidebar).

21 THE COURT: Two things. I want to put on the
22 record that all your prior objections and positions about the
23 charges, your objections are preserve. Technically you have
24 to do it at the end of the charge. I want to make clear I
25 consider them all preserved.

1 Now, I also give, sometimes you hear things, you
2 hear things you didn't think of before. I don't want you to
3 repeat objections, but if any new objections occurred to you
4 in the course of, as I was reading, sometimes you hear things
5 aurally, through the ears, you react differently to them. I
6 give everybody a chance to focus on something they might not
7 have focused on when we had our charge conference.

8 MR. PRESS: We don't have any new objection.

9 MR. FRAM: We, on behalf of ALPA we have nothing
10 further.

11 Did I see your Honor cross off the foreperson
12 selections?

13 THE COURT: There is an ongoing battle among judges
14 as to whether number one is a foreperson. I decided to let
15 them elect their own. This is a complicated case. I had
16 both concepts here. I am taking this out. I didn't read it.

17 MR. FRAM: I noticed that. So they will get a
18 revised version of this?

19 THE COURT: Yes. I will take this up. I have two,
20 the thing you pointed out. I will take that out. And I am
21 going to take this out.

22 MR. FRAM: Thank you, your Honor.

23 THE COURT: Okay.

24 (Open court).

25 THE COURT: The next thing we have to do is swear

1 in the Court officer.

2 THE CLERK: Please come forward.

3 THE COURT: We are ready to give you one of our
4 finest court officers.

5 BRAD ASHFIELD, SWORN AS COURT SECURITY OFFICER.

6 THE COURT: Mr. Ashfield, it is a very amazing.
7 Sometimes you look out, he is going to look taller, shorter,
8 fatter, thinner, more hair, less hair. More neatly pressed
9 suit. Less neatly pressed suit. It is just amazing how his
10 looks keep changing. But it is just the way he is.

11 Sometimes he will look like a woman. I never can
12 tell when you see your officers just sitting out in the hall
13 in front of your door. He is very amazing.

14 Ladies and gentlemen, the case is yours. We will
15 send in within, I don't know, ten minutes or something, the
16 exhibits. We will ship them in to you. And in about ten
17 minutes or so, or 15 minutes, I will ship in to you three or
18 four copies of the charge that I read to you as well as
19 probably six or seven copies of the verdict sheet so you can
20 use it for scrap paper.

21 So do your duty. Justice will be done.

22 (Jury leaves the courtroom at 11:47 a.m.)

23 THE COURT: Counsel, you don't have to sit in the
24 courtroom, because one has no idea obviously how long this
25 will take, but be where I can get you.

1 Larry asked the jury if they wanted to leave at two
2 today. I told him I would be prepared to stay until five or
3 something. They said?

4 THE CLERK: They want to leave at two.

5 THE COURT: They want to leave at two. I will
6 offer them every day the chance to stay later, if they want
7 to. On the days that I am here late I will just stay as long
8 as necessary. If not, I will arrange for another judge to be
9 here and I will be accessible by phone if something comes up.
10 But I don't know what, whether they are going to stick to the
11 two o'clock, or their desire to get it done with is going to
12 motivate them to do longer days. I don't know.

13 MR. FRAM: You will bring them back in at two
14 o'clock before you let them go home.

15 THE COURT: I will, on the first or second day, I
16 will today certainly. Because I want to give them some
17 further instructions that I haven't given this them. I am
18 going to instruct them, for instance, that, you know, remind
19 them not to talk to their family and friends, loved ones.

20 I am also going to say when they come in in the
21 morning, frequently jurors come in in groups, three, two,
22 they shouldn't be discussing the case in small groups. In
23 other words, they should discuss the case only when they are
24 all twelve of them are together. And they might not realize
25 that. They may not think they are doing anything wrong if

1 three of them are discussing something as they are coming in,
2 it may not occur to them so I instruct them as to that.

3 And subsequent days I may not. I may just let them
4 go home unless you want me to. But today I am definitely
5 going to.

6 MR. FRAM: Will you inquire as to their selection
7 of a foreperson at the end of today?

8 THE COURT: I told them, that is the first thing
9 they have to do.

10 MR. FRAM: I think we will be curious to know who
11 gets chosen. I guess if you ask them to identify the person.

12 THE COURT: Do both sides want that?

13 MR. PRESS: Doesn't matter to me at all.

14 THE COURT: If you have no objection to my doing
15 that, I will.

16 MR. PRESS: I don't have an objection.

17 THE COURT: I will have Larry make an inquiry.

18 MR. FRAM: We are just curious.

19 THE COURT: The name of the foreperson. You can
20 all been seated. I am sorry. Let me stand.

21 I have both picked juror number 1, whoever the seat
22 would be, as foreperson, and other occasions I have had the
23 jury elect their foreperson. I can't say that I have had bad
24 results in any event. I have -- both have worked out. But I
25 thought, this is a fairly long case. However, I thought it

1 might be a good idea for them to pick their leader. They may
2 have a sense of who is, of who will be best for that task.
3 So I chose here to do that. We will see. But I will, after,
4 you know, this afternoon, later, I will inquire as to, I will
5 have Larry inquire as to who has been elected the foreperson.
6 Okay.

7 So I don't think it is necessary today. I don't
8 think they will have a verdict, that would be fairly fast.
9 Make sure I know where you are and where I can get at you
10 should there be a question.

11 We will get the exhibits in. I am going to go up
12 and have new copies of this made.

13 (Recess)

14 (The jury enters the courtroom at 2:00 p.m.)

15 THE COURT: Okay. Ladies and gentlemen, I
16 understand you are on the way home. Job one is to have a
17 safe trip home, and a safe trip in tomorrow. We will see you
18 at 8:30.

19 Just a few instructions. One, continue not to
20 discuss the case with family, friends, loved ones, co-
21 employees, or anybody.

22 Number 2, remember my instruction on use of
23 computers, cell phones, social media, you know, web sites,
24 research. Stay off that. Don't do any research on the case.
25 And don't discuss it over the internet with anybody.

1 The third point, as you leave and you come in in
2 the morning you may be in small groups, two or three. Do not
3 discuss the case until all twelve of you have assembled
4 tomorrow morning. In other words, it is important that
5 everybody hear everything. And so we don't want to -- it
6 would be inadvertent.

7 I am not suggesting you would be doing anything
8 with a malicious motive, but you might as you are walking in,
9 three of you might start discussing it. Don't do that.
10 Don't discuss the case until everybody is here. All twelve
11 of you are in the jury room and have at it again.

12 I will see you tomorrow morning. Again, I will
13 make you the same offer tomorrow. If you want to stay beyond
14 two, let me know. If you want to leave at two, let me know.
15 Your choice. Whatever you choose to do is fine with me.

16 So it is your decision. So again, with my
17 continuing thanks, I will see you tomorrow.

18 (Jury leaves the courtroom)

19 I don't know if Larry told you, apparently juror
20 number 1 was elected foreperson. Now you know.

21 So my changing way of doing it didn't change the
22 result.

23 I am not going to call them out in the morning. I
24 will just have, but I will come here just to check at 8:30,
25 make sure they are all here. And I will check, so I will be

1 here a few minutes before 8:30 just to make sure they are all
2 here properly. I don't see a purpose in calling them out
3 here. I have nothing to tell them.

4 So with that, have a good night, everybody. And
5 resist the urge to send me an email. As your hand is
6 hovering over the computer key, like a dying Dr.
7 Strangelove. Grab your hand and keep it from punching the
8 keyboard.

9 I will see you all tomorrow.

10 MR. FRAM: Thank you, your Honor.

11 (Adjourned at 2:00 p.m.)
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